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Current Topics.

Blackstone and his Influence.

WHILE we in England have been content to accept as axiomatic the fact that BLACKSTONE by his "Commentaries" effected a clarification of the principles of our law, we have never become quite so dithyrambic as our American confrères over those contributions to legal literature, still less have we produced any worthy record of his life and appreciation of his labours in acknowledgment of the immense service rendered by him to legal science. Now, however, this gap has been filled by the industry and research of an American lawyer, Mr. LEWIS C. WARDEN, who enables us to realise more clearly the debt we owe to BLACKSTONE. It may sound strange, but Mr. WARDEN assures us that there have actually been more editions of the "Commentaries" published in France than in England; that translations have been issued at least once in almost all the European languages; and that even in the Far East the work was applauded and translated. It was in America, however, that BLACKSTONE'S writings exercised the greatest influence in early days. They were carefully studied by the fathers of the republic; at a later date the discovery and perusal of the "Commentaries" altered the life and plans of ABRAHAM LINCOLN; while upon another distinguished American they exercised a like influence. This was JAMES KENT who, as a boy of fifteen, finding a copy of the "Commentaries" in a country house, studied them to such purpose that afterwards he was heard to say that "the work inspired me so at the age of fifteen with awe, that I fondly determined to be a lawyer," which eventually he did become, as also the author of his "Commentaries" which alone became a rival of the English work.

American Appreciation of the Lord Chancellor's Message.

UNDER the caption, "A Heartening Tribute," the current number of the *American Bar Association Journal* makes a highly appreciative acknowledgment of the gracious message conveyed to the recent meeting of the Association at Cleveland, by LORD MACMILLAN on behalf of the Lord Chancellor. "Like yourself," wrote LORD MAUGHAM to his learned colleague, "I am well aware of the splendid service which the American Bar Association throughout the past half century has rendered in maintaining the traditions of our great profession, and in promoting its contribution to the cause of ordered civilisation. At few, if any, moments in the world's history has there been better reason to realise how precious are the principles of justice and freedom which are our common heritage or more need to be resolute in upholding these principles." Commenting on this gracious message, the *Journal* says that the words it embodies should be emblazoned as one of the most notable tributes to the work of the Association in its whole history and then it adds: "even at times when force and opportunism seem to be ascendant over right and good faith, the significance and value of the work of the representative organisation of American lawyers should be kept in mind."

The Criminal Justice Bill.

THE Criminal Justice Bill was introduced in the House of Commons on 10th November by the Home Secretary, supported by the CHANCELLOR OF THE EXCHEQUER, Mr. COLVILLE, Mr. ELLIOT, EARL WINTERTON, the ATTORNEY-GENERAL, the LORD ADVOCATE and Mr. LLOYD. The purpose of the measure is "to amend the law relating to the probation of offenders, the supervision of persons by probation officers and the functions of probation officers; to provide new methods and to reform existing methods of dealing with offenders and persons liable to imprisonment; to amend the law relating to the management of prisons and other institutions and the treatment of offenders after sentence and of persons committed to custody; to consolidate certain enactments relating to the matters aforesaid; and for purposes connected therewith." The Bill has been described as the most important penal reform measure put before Parliament for a long time. Readers will be familiar with the main lines upon which it has been drafted from the pages of the daily press. It is unnecessary at this stage to supplement the information which has been given, particularly as it may be necessary to deal with the terms of the Bill in some detail during its passage through Parliament. The basic principles of the proposed reforms—to keep people out of prison so far as this is consistent with the effective administration of the criminal law, and to provide those committed to prison with such reformatory treatment as will give them a reasonable chance of taking their place in the community after their release—will command wide support, and it may be hoped that in its ultimate form the measure will maintain the necessary balance between what is due to offenders on the one hand, and to the rest of the community on the other.

The Prevention of Fraud (Investments) Bill.

THE attention of readers may be drawn to certain changes which have been effected in the Prevention of Fraud (Investments) Bill which was reintroduced in the House of Commons on 9th November, by Mr. OLIVER STANLEY, President of the Board of Trade. The objects of the measure, it may be recalled, are to provide for regulating the business of dealing in securities; to restrict the registration of societies under the Industrial and Provident Societies Act, 1893, and confer on the registrar of building societies further powers in relation to such societies; and to make general provision for preventing fraud in connection with dealings in investments. The Bill was first introduced last July, the earlier publication of the Bill having been for the purpose of giving the interests concerned an opportunity of considering its provisions. The amendments above referred to have been introduced in response to various criticisms and suggestions that have been made. As originally drafted the Bill provided that it should be an offence to induce another person to enter into various transactions such as buying shares, underwriting shares, acquiring rights, or participating in speculations in commodities "by any statement which he knows, or could reasonably be expected to know, to be false, misleading or deceptive, or by any dishonest concealment of material facts, or by any promise or forecast which he has no reasonable grounds for supposing to be likely to be fulfilled or verified." It has been suggested that the foregoing provisions were so wide as to jeopardise persons giving honest advice and the following phrase has accordingly been substituted: "by any statement, promise, or forecast which he knows to be misleading, false, or deceptive, or by the reckless making of any statement, promise, or forecast which is misleading, false, or deceptive." Moreover, it was thought that there was a danger, under the original provisions of the Bill, that the Building Societies Acts might be used to carry on undesirable activities of the type carried on under cover of the Industrial and Provident Societies Acts which a clause of the Bill is designed to prevent. A new clause, therefore, gives the registrar powers to prevent any particular building society circularising the investing public. There is also a new provision to the effect that the Board of Trade rules for regulating the conduct of business by holders of licences shall be published in draft, so that any objections and representations which may be made in regard to them may be considered before the rules are actually made.

Private Members' Bills.

AMONG Bills presented during the existing session by private members who have been successful in the ballot, is the Law of Libel (Amendment) Bill, sponsored by Sir STANLEY REED. This measure is an amended form of the Bill presented earlier in the year by Mr. A. P. HERBERT. It is now supported by the Empire Press Union. One of its main objects is to put an end to what are known as "gold-digging" actions against newspapers, and it has been stated that the promoters do not wish in any way to weaken the protection given by the law to plaintiffs with genuine grievances but only to check the practice whereby litigants often bring groundless actions on the offchance of obtaining damages. Several of the Bills presented relate to the subject of coal mines. One of them, the Workmen's Compensation Acts (1925 to 1934) Amendment Bill, seeks to amend the Acts named with respect to miners' nystagmus, to provide for the establishment of medical tribunals of appeal, to make certain alterations in medical procedure, and to make sundry provisions regarding lump sum settlements. Another, the Coal Mines Bill, has for its object the repeal of the law amending temporarily the Coal Mines Acts, 1887 to 1919, with respect to the hours of employment below ground; a third, the Public Health (Coal Mine Refuse) Bill, seeks to amend the Public Health Act, 1936, with respect to coal-mine refuse liable to spontaneous combustion; while a fourth, the Mining Subsidence Bill, contains provisions for the payment of compensation for damage caused by mining subsidence. Two of the measures are concerned with the enjoyment of public rights. These are the Access to Mountains Bill, which is designed to secure to the public the right of access to mountains and moorlands and the Highways Protection Bill, the object of which is to make provision for the preservation of the amenities of certain highways by the prohibition or restriction of traffic thereon. Two Bills relate respectively to Parliamentary and local elections. The Representation of the People Acts (Amendment) Bill contains new provisions with respect to the voting of sick persons, and the Local Elections (Proportional Representation) Bill provides for the introduction of the system named in the election of members of local authorities. Finally, mention should be made of the Adoption of Children (Regulation) Bill, which contains proposals to regulate the making of arrangements by adoption societies and other persons in connection with the adoption of children, to provide for the supervision of adopted children by welfare authorities in certain cases, to restrict the making and receipt of payment in connection with the adoption of children, and to amend s. 2 of the Adoption of Children Act, 1926; and of the Official Secrets Bill which has for its object the amendment of s. 6 of the Official Secrets Act, 1920.

Trunk Roads: Loss of Status.

A POINT of some interest has arisen regarding trunk roads which through being by-passed revert to the status of county roads. Some time ago the Minister wrote asking road authorities to contribute towards the cost of carrying out improvements along such roads, and a certain county council decided, as a matter of principle, not to agree to the proposal except in one case where there were special circumstances. In a recent note concerning the matter in *The Times*, it is indicated that later a communication was received by the county council from the Ministry of Transport stating that the Minister took the view that where he proposed to supersede an existing section of trunk road by the construction of a by-pass he would not be justified in putting in hand any major work of improvement on that section. If, however, in any such case the local authorities interested desired an improvement to be carried out the Minister would be prepared to co-operate with them if they were willing to make reasonable contribution towards the cost of the work. The Minister added that he would meet the whole cost on a section of road to be superseded by the construction of a by-pass of any improvement work urgently needed in the interests of safety.

A Rent Restriction Point.

AMONG the miscellaneous amendments introduced by the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, is that contained in s. 7 (2) of the Act with reference to the provisions of s. 2 (1) (*b*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, relating to increases of rent corresponding to increases in rates. The new sub-section provides that in computing whether any, and, if so, what increase in the rent of a dwelling-house to which the principal Acts apply is permissible under s. 2 (1) (*b*) of the Act of 1920 the amount of any allowance made to the landlord under any of the enactments relating to allowances given where rates are paid by the owner instead of by the occupier shall be treated as part of the amount payable by the landlord in respect of rates. There is a proviso to the effect that the sub-section shall not come into operation with respect to any dwelling-house in England until the date on which a general demand for the general rate in respect thereof is first made on or after 1st October, 1938, not being a demand for a sum which had already been demanded before that date. Doubts concerning the meaning of the sub-section appear to have been entertained in some quarters and the Minister of Health was recently asked in the House of Commons whether

he was aware of the divergence of opinion which existed as to the effect of the sub-section, and whether he proposed to issue any directions as to whether, in calculating the increase of rates to be passed on to the tenant, the amount payable in 1914, the gross rates, should be deducted from the amount payable in 1938, or whether the amount actually paid in 1914, the net rates, should be deducted from the amount payable in 1938. In reply, Mr. ELLIOT stated that the intention of the Government was to provide that the comparison of current rates with rates in 1914 should be on the basis of gross rates, and not, as previously, on the basis of net rates, but he indicated that, if the question arose whether the provision failed to give effect to that intention the matter would only be settled by the courts.

Revision of Revocable Settlements.

WE recently intimated in these columns (82 SOL. J. 843), in connection with the provisions of para. 1 (*c*) (ii) of Pt. II of Sched. III to the Finance Act, 1938, that the Board of Inland Revenue would not regard the fact that annual payments under a settlement might cease on the death of a beneficiary as precluding relief in respect of income tax. Reference should be made to a further point which is dealt with in the November issue of *The Law Society's Gazette*. The council of The Law Society, it is stated, has been informed in reply to an inquiry by a member that the officers of the Special Commissioners have stated that where a settlement, otherwise satisfying the conditions of the aforementioned paragraph, provides that the annual payments shall cease on the bankruptcy of, or assignment or charge by, the beneficiary, such a provision would not be regarded as barring a claim to the relief afforded. We desire to express our indebtedness to our contemporary for being able to bring this information to the notice of our readers.

Central Criminal Court: November Session.

FOUR charges of murder, one of manslaughter, and two of robbery with violence, figure in the lists for the Central Criminal Court for the November session which opened on Tuesday. At the beginning of the week there were ninety persons awaiting trial or sentence. The calendar also included seven charges of bigamy, two of illegal operation, two of conspiracy to defraud, three each of demanding money with menaces and of fraudulent conversion, four of forgery, and five of burglary or house-breaking, and one of publishing a defamatory libel. Offences to be dealt with comprise two under the Explosives Act, two under the Bankruptcy Acts, and four against the Post Office. Cases in the High Court Judges list are being dealt with by ASQUITH, J.

An "Attempt" Charge.

SECTION 28 (1) of the Road Traffic Act, 1930, provides that every person who takes and drives away any motor vehicle without having either the consent of the owner or other lawful authority shall be liable on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £50. In a recent case at Bow Street Police Court two men were charged, *inter alia*, with attempting to take a car away without the owner's consent. Mr. DUMMETT observed that the case raised a curious position in the law. A charge of driving away a car without authority could be dealt with summarily, but not one of attempt. As a rule, an attempt to commit an offence was incorporated in the same Act of Parliament, and in the same clause as the actual deed itself. The attempt in that instance had not been so incorporated, with the result that where an attempt only was charged evidence must be taken in deposition form with a view to a committal to the sessions or the assizes. The men expressed their willingness to be tried summarily on an alternative charge, which had been withdrawn, of an attempt to steal a car, and, when the case was called on later after being put back to enable the learned magistrate to consider the position, another charge, of unlawfully getting on to a motor car standing on the road and tampering with the mechanism, was substituted. This was dismissed, the magistrate not being satisfied that the men intended to tamper with the mechanism of the vehicle.

Recent Decisions.

IN *Governors of Queen Anne's Bounty* v. *Tithe Redemption Commission* (p. 931 of this issue), the Court of Appeal (Sir WILFRID GREENE, M.R., and SCOTT and CLAUSON, L.JJ.), upheld a decision of MORTON, J., to the effect that having regard to the provisions of ss. 20 (3) and (10), proviso (*a*), of the Tithe Act, 1936, the defendants were justified in discontinuing proceedings in the county court to recover arrears of tithe rent-charge.

In *Pratt* v. *Cook, Son & Co. (St. Pauls) Ltd.* (p. 930 of this issue), the Court of Appeal (SLESSER and FINLAY, L.JJ., GODDARD, L.J., dissenting) gave reasons on 11th November for allowing the defendants' appeal from a judgment of WROTTESLEY, J., who had held that a former employee was entitled to recover from the defendants in respect of deductions from his weekly wages alleged by him to have been made in breach of the Truck Acts, 1831 and 1896.

In *Simons* v. *Simons* (p. 933 of this issue), GODDARD, L.J., sitting as an additional judge of the King's Bench Division, held that the plaintiff was not in a position to recover in an English court an amount alleged to be due under a maintenance order of the Probate Court of the Commonwealth of Massachusetts, the plaintiff having failed to prove that her husband was domiciled in Massachusetts at the time when that court granted her a divorce. In such a case an order *in personam* must suffer the same fate as the rest of the decree. See *Paradopoulos* v. *Paradopoulos* [1930] P. 55.

In *Racecourse Betting Control Board* v. *Wild* (*Inspector of Taxes*) (p. 932 of this issue), MACNAGHTEN, J., reversed a decision of the Special Commissioners of Income Tax, and held that in computing profits for the assessment of income tax under Case 1 of Sched. D to the Income Tax Act, 1918, the board was entitled to deduct the full amount which it had to pay to the Manchester Racecourse Company, Ltd., for the user of premises housing totalisators on the racecourse. The fact that the agreement contained a declaration that the yearly payments were exacted by the company with a view to recouping the capital cost of the buildings was immaterial. *Commissioners of Inland Revenue* v. *Duke of Westminster* [1936] A.C. 1, followed. *Commissioners of Inland Revenue* v. *Adam*, 14 Tax Cas. 34, distinguished.

In *Walton, C. F. E.* v. *Walton, L. A.* (*The Times* 11th November), HENN COLLINS, J., upheld the Registrar's refusal to grant a certificate that the proceedings were in order on the ground that the present petition by a wife for divorce, while alleging desertion for three years, disclosed that within that period the petitioner had filed a petition for divorce on ground of the husband's adultery, the earlier petition having been dismissed on the petitioner's application. It was held that the earlier petition necessarily put an end to the desertion. See *Marthews* v. *Marthews* (mentioned 82 SOL. J. 899).

In *Watson* v. *Binet* (*The Times*, 17th November) the Court of Appeal (Sir WILFRID GREENE, M.R., and SCOTT and CLAUSON, L.JJ.) upheld a decision of BENNETT, J., to the effect that the plaintiff was not in a position to recover possession of a number of automatic machines from the defendant or the person under whose control they had been placed, or entitled to a share of the takings, or damages for conversion. The plaintiff had given the defendant some £245 and the learned judge intimated that he was not convinced that the money had been paid to enable the defendant to buy specific machines, or that she had ever believed that the machines in question were hers.

A Sale of Church Property.

SOME DIFFICULT POINTS.

THE possible complications attending the purchase of property, *primâ facie* belonging to the church, were aptly illustrated a short while ago when what the parties to a proposed sale hoped would be a fairly simple transaction turned out to be a most involved matter; and in the course of the ten months which elapsed between the purchaser's first offer and the execution of the conveyance a number of difficult and quite unforeseen points either arose or had to be taken into consideration.

The property in question was a pre-Tudor house in a town in the South of England. The title deeds, as is often the case with church property, were apparently lost. The purchaser first saw the property at the beginning of one February. Originally one house, it had some two hundred years previously been divided into two. It had been unoccupied for several months when the purchaser first saw it. It was considered uninhabitable, and required considerable expenditure to restore it to its original form and to equip it with services and modern conveniences. It stood not far from the vicarage and the ancient parish church, and the first information that the purchaser received about it was that it "belonged to the church," and that the future of the house was frequently a subject of discussion at meetings of the parish council, since insufficient funds were available to make it habitable.

Shortly before the purchaser arrived on the scene, the general belief that the house "belonged to the church" had become crystallised into a theory that, more specifically, it was glebe property, i.e., formed part of the vicar's benefice like the vicarage itself, so that the income of the proceeds of a sale of the property would be payable to him personally like his stipend. Plausible evidence to that effect having been brought to the vicar's notice, negotiations for the sale proceeded on the basis that the property formed part of the glebe, and ultimately a price was agreed between the vicar and the purchaser, subject to the approval of the dilapidations committee of the diocesan council, the diocesan surveyor having meanwhile prepared a report on the property. The purchaser's offer having been accepted by the diocesan authorities, the purchaser was informed that the sale would take place under the provisions of the Ecclesiastical Leases Acts. The sale could, however, if the property formed part of the benefice, have taken place under the Glebe Lands Act, 1888, which is intituled "an Act to facilitate the sale of glebe lands." By s. 2 of that Act, the incumbent can, after notice to the bishop of the diocese and to the patron of the benefice, apply to the Minister of Agriculture (the Land Commissioners under the Act as originally passed) to approve the sale of any part of the glebe property except the parsonage house and certain grounds appurtenant to it. The Minister, if satisfied that the proper notices have been given to the bishop and the patron, and that there is no objection by either, or that any objections which have been made ought not to prevent the sale, may then approve it. On enquiry whether the transaction might not be carried out under that Act, the purchaser was informed by the diocesan solicitors who acted for the vicar that sales of glebe property in the diocese were always conducted under the Ecclesiastical Leases Acts, and that no departure from that practice would be acceptable to the vendors. Section 11 of the Glebe Lands Act, 1888, provides that nothing in that Act is to limit or prejudice the powers granted by, or the provisions of, the Ecclesiastical Leases Acts, so clearly the former Act provides merely an alternative procedure. The procedure under the Ecclesiastical Leases Acts provides that the sale must have the approval of the Ecclesiastical Commissioners. The provision of the alternative procedure is a little puzzling if there is no power in either party to the proposed sale to insist on its adoption, nor does the procedure which it prescribes appear to be any simpler than that under the Ecclesiastical Leasing Acts.

The alienation of their lands on lease by ecclesiastical corporations sole or aggregate was permitted by the Ecclesiastical Leases Act, 1842. That Act is intituled: "An Act for enabling ecclesiastical corporations . . . to grant leases for long terms of years." Section 1 of the Ecclesiastical Leases Act, 1858, provides that, where the Ecclesiastical Commissioners are satisfied that any land authorised by the Act of 1842 to be leased may with advantage to the estate be sold, an ecclesiastical corporation may, subject to all the necessary consents and formalities, sell the land.

Early in May, the provisional bargain between the purchaser and the vicar was ratified by the diocesan council. The consent had then to be obtained of the Archbishop of Canterbury as patron of the living. Finally, the Ecclesiastical Commissioners having also given their consent, the contract of sale was signed by the vicar and the purchaser in July, the purchaser duly paying to the Commissioners a deposit of 10 per cent., and completion being fixed (very over-optimistically as it turned out) for the 31st July.

It was a term of the contract that, as no title deeds to the property were known to exist, or had, in spite of extensive search, been found, the purchaser should accept as a root of title a statutory declaration by an old resident of the town that within his memory the property had always been in the possession of the church. Some ten days before completion was due, the intending statutory declarant, a solicitor, discovered a report, made by his late partner when a churchwarden in 1887, of researches which he had made into the history and title of the property. From that report it appeared that, for at least 200 years from about 1734, the house, as divided into two, had been occupied by the parish clerk and the sexton, or one of them, at a nominal rent. The sexton or the clerk were referred to in minutes of meetings of the parish council as occupying the houses, but there was no reference to any right of occupation in them as part of their office. In the opinion of the learned investigator it was not clear in whom the legal estate of the property was vested. Although the parish officers had been mentioned in certain rent books relating to the houses (for a small annual rent-charge, later redeemed by the churchwardens, issued out of each) as the owners, and although they appeared to have exercised certain acts of ownership, the legal estate, he thought, could not be in the churchwardens as they were not a corporation for the purpose of holding land. He was inclined to think that, as the houses practically formed part of the endowment of the church, the legal estate was in the same person as the freehold of the church and churchyard. He made no reference to the Ecclesiastical Leases Acts or the Glebe Lands Act, and was of opinion that the consent to sale of the vestry as well as of the patron would be necessary, and that even then a difficulty might arise in that a subsequent vestry might determine to appoint a sexton who would by virtue of his office have a right to reside in the house. He hesitated, in conclusion, to express any opinion as to what powers there were to deal with the property in any way inconsistent with its use as a dwelling for sexton and clerk. His opinion, therefore, was that the consent of the vestry to a sale must be obtained; in other words, that the property, like the church and the churchyard, "belonged to the parish" as distinct from being part of the benefice. In the result a quite unexpected repository had to be found for the legal estate. One thing, however, emerged clearly from the report, namely, that the house could not be glebe property, since for 200 years parish officers had been living in it and no rent in respect of that occupation had been paid to previous incumbents of the benefice.

The suggestion was accordingly advanced that the property must be in the same ownership as the church and churchyard themselves, and that the sale could proceed on that footing.

The purchaser's solicitors, however, formed a clear opinion that the facts disclosed by the report, if they did not raise a presumption, certainly revealed a strong possibility that there might be a right in clerk and sexton *virtute officii*, under some lost instrument creating a charitable trust, to occupy the respective parts of the old house. They took the view that a serious defect of title had come to light. They advised their client very properly that the facts that the vicar himself did the work of the parish clerk, that there had been no sexton in the parish for forty years, and that the appointment of another was unlikely, did not dispose of the matter, because there was nothing to prevent the appointment of such officers in the future. The fact that extensive search by the vendors' solicitors had revealed no title deeds did not permit the purchaser's solicitors in the interest of their client to disregard the possibility that some deed of charitable endowment might be discovered giving sexton and clerk the right to live in the respective houses. There was the possibility, if such a right of occupation should become established, that the purchaser might, at some future date, having spent a considerable sum of money in buying and restoring the property, find himself at best with a bare legal estate divested of the right to occupy the house or even to obtain from it anything more than a nominal rent.

It is interesting to speculate on the position which would have arisen had the purchaser's interests been less zealously guarded by his solicitors, and had a deed creating a charitable trust in favour of the clerk and sexton in fact come to light after the purchase. Would the purchaser have been obliged to hand over the property in its improved condition? Or would he have been entitled first to reduce the property once more to the condition in which he found it, at any rate, to the extent of removing all the modern equipment and sanitary and other fittings, and destroying the internal decoration? It might be argued that to do so would be churlish and sterile, if strictly logical. On the other hand, the threat, if backed up by the right, to take that course would at least be a powerful weapon for inducing a reasonable attitude in any adverse claimants.

The less abstract question, however, next arose of how to cure the defect of title. Accordingly, acting on the assumption that the houses were the subject of a charitable endowment, the documentary evidence of which was lost, the vicar and churchwardens, as the likely trustees of the supposed charity, made application to the Charity Commissioners, who, fortunately for the purchaser, took the view on the evidence that the property must in truth be the subject of a charitable trust. Had the Charity Commissioners in fact refused to take cognizance of the matter, a position of uncertainty would have arisen which, so the purchaser was advised, might have made it impossible for him to buy the property save at his own risk. The belief that the danger was a real one received striking support in the refusal of an insurance company who were approached to cover the risk.

A process was now set in motion as between the trustees and the Charity Commissioners which had the dual object of (*a*) vesting the legal estate of the property in the Official Trustee of Charity Lands; and (*b*) preparing a scheme for the charity which would at one and the same time authorise the sale to the still-willing purchaser and extinguish any possible right of occupation by future sextons or parish clerks. The sale then proceeded under the provisions of the Charitable Trusts Acts, 1853 to 1925. Two of the necessary formalities were (*a*) advertisements of the intended sale at the church door and in the local papers for one calendar month, containing a statement of the agreed price and an invitation of higher offers or objections by a certain date; and (*b*) the drawing up and advertisement of a scheme authorising the sale and providing for the application of the purchase money.

Again, it is interesting to consider the anomalous position which existed while these formalities were being carried through. The contract between the vicar and the purchaser was, of course, still subsisting. The purchaser might no doubt at this point have repudiated the contract and recovered his deposit from the Ecclesiastical Commissioners. It is difficult to see what legal effect the contract was at that point capable of having. On the one hand, the vicar could not enforce it: on the other, the purchaser could not claim specific performance in the absence of anyone who could give him a watertight title: and supposing that, for some good reason of their own (for there could naturally be no question of *mala fides*) the Charity Commissioners had decided not to go through with the sale, against whom would the purchaser have had a remedy, and would his remedy have included a claim for specific performance, and, if so, against whom? For his only contract was with the vicar as supposed life tenant of the property in question. It would seem that the purchaser's only remedy was a personal one against the vicar under the contract, a remedy which, needless to say, he would hardly consider pursuing against an innocent person and a neighbour.

An interesting situation would, further, have arisen if, in answer to the invitation contained in the Charity Commissioners' advertisement of the sale, a third person had come forward with a better offer for the property. In such an event, the purchaser would surely have been driven to take the standpoint that his contract of sale was binding as against the vicar and that that innocent and unfortunate party must himself find the difference between the two prices. The position was unusual enough in that the purchaser had, by virtue of the contract of sale, acquired an equitable interest in the property: moreover, in pursuance of that interest, he was already actually paying for fire insurance in respect of a property which was then being offered to the public for sale by third parties. On the other hand, the purchaser having once accepted that the sale must proceed on the altered footing, namely, as a sale of property belonging to a charity, it may be asked whether he could still claim even against the vicar under a contract which that gentleman had signed in a quite different capacity, namely, as tenant for life of the glebe property. The vendors in the altered circumstances were the vicar and churchwardens as trustees of the charity, and with the vicar in that capacity the purchaser had no contract at all. The vendors were, on any view, necessarily persons in relation to whom no possibility of ill-faith could arise, but from the strictly legal point of view it is difficult to imagine a more complete contrast than that between the *primâ facie* security of the purchaser's position under his contract and the uncertainty of that position in actuality.

In point of fact, matters now proceeded smoothly. The Charity Commissioners began by making an order vesting the legal estate in the property in the Official Trustee of Charity Lands, a vesting which has the convenience of removing all doubt as to title while leaving the trustees of the charity free to administer it. The order further constituted the vicar and churchwardens trustees of the charity. No objection was raised to the scheme, and no higher offer for the property was made. The customary conveyance was accordingly drawn up, which has the peculiar feature that the Official Trustee of Charity Lands, although named as a party to the conveyance, does not execute it. It appears nevertheless that the Charity Commissioners consider that it is for the purchaser to see that the conveyance is effective to pass the property to him: See Halsbury's "Laws of England," 2nd ed., "Charities," p. 263, note (*f*). The purchaser's solicitors, no doubt bearing that recommendation in mind, thought it wise to obtain counsel's opinion on the conveyance. Counsel having expressed his approval, the conveyance was duly executed, and the transaction completed.

One small obstacle yet remained in the purchaser's way. Not unnaturally, he took steps immediately on completion of the transfer to have the title to the property registered.

The Land Registry, however, queried the conveyance on the ground that the Official Trustee of Charity Lands, in whom the legal estate had been vested, had not executed the conveyance, and they expressed the opinion that it should be reinforced by a statutory declaration as to the previous ownership of the property. The old resident of the town to whom reference has already been made having declared that, for as long as he could remember, the property had been enjoyed by the church authorities as owners, the Registrar finally accepted the registration, and issued the land certificate to the purchaser. It was consistent with the doubt in which the whole matter had been involved from the outset that the purchaser's solicitors, whose care and vigilance had brought about a safe solution, should have been of the opinion that the statutory declaration on which the Chief Land Registrar had insisted was unnecessary.

The Width of a Highway.

It has generally been assumed that a public highway extends from hedge to hedge, but this is by no means a presumption to be accepted without investigation into the facts; and the recent case of *Hanscombe and Others* v. *Bedfordshire County Council* (1938), 82 Sol. J. 697, raised the question in a manner that enabled Farwell, J., who tried the action, to deliver a (reserved) judgment which is likely to prove an important contribution to the case law on the subject.

The facts in the *Bedfordshire Case* were that the plaintiffs (trustees) were owners in fee simple of land situated on both sides of a highway. On the east side of the highway was a ditch on the road side of the fence. Along a portion of this ditch the defendant council (as highway authority) laid 6-inch pipes without the knowledge or consent of the plaintiffs, who claimed a declaration of title to the ditch. It appeared that the highway in question was an old way and there was no evidence as to when or by whom or on what terms it had been dedicated to the public. The ditch had served to carry away the overflow from a pond on the plaintiffs' land and also surface water from the road—channels having been cut in the grass verge to make this possible. The ditch had always been kept cleansed by the plaintiffs' servants and they had done other acts of ownership in connection with it, but the council had never exercised any such acts of ownership. One day, a heavy lorry passing along the highway ran too near to the ditch and one wheel slipped over the edge, breaking down part of the bank on the roadside. As it was impossible to repair this satisfactorily the council laid the pipes in question along the damaged strip and then filled in the ditch.

Farwell, J., was satisfied that the repair carried out by the council was necessary and proper, but the defendants had sought to justify what they had done on alternative grounds, viz.: (1) that the portion of the ditch in dispute was vested in them as part of the highway; or (2), if not so, that they acted within the scope of their statutory powers. Upon these submissions his lordship passed judgment. In regard to (1) he held that when between the metalled part of a highway and the fence or hedge enclosing the land on that side there is a ditch which, *primâ facie*, is not adapted for the exercise by the public of their right to pass and repass, the presumption is that the ditch does not form part of the highway. See *Chorley Corporation* v. *Nightingale* [1906] 2 K.B. 612, as to rebuttal; but the onus of proof lies on those who assert that the ditch is part of the highway.

In regard to (2), the defendants relied on s. 67 of the Highway Act, 1835, and s. 48 of the Act of 1864. He (his lordship) could find nothing in s. 67 which authorised a highway authority to fill in a ditch belonging to another; and as to s. 48, which must be read in conjunction with the earlier Act, a highway authority might, under the later statute, do various acts for improving the roads and, for such purpose, might acquire property or rights compulsorily. If it were necessary to widen the road by taking in the ditch, the highway authority could take the necessary steps to acquire the land for that purpose; but in this case the defendants had taken no such steps and were not entitled to fill in the ditch without regard to the rights of the owners. He therefore granted the declaration of title asked for by the plaintiffs, with nominal damages, 40s. and costs.

This judgment of Farwell, J., is interesting and useful as being complementary to previous decisions touching this aspect of highway law. In the case of *Chorley Corporation* v. *Nightingale* (*supra*) the Divisional Court (Kennedy and A. T. Lawrence, JJ.) assuming (as stated in "Lumley," 6th ed., at p. 530) that "the highway is presumably the entire space between the fences which has been dedicated to the public, and is capable of being used for passage," a ditch could legally be treated as part of land dedicated to the public as a highway, and proof of dedication of a lane between fences will include a ditch situate on one side of the lane next one of the fences. Accordingly they found that where there had been a dedication including such a ditch, and such ditch had been filled up, so that it could be used for passage, the road ought not to be treated as a road or street which consisted partly of a highway and partly of added roadway so as to constitute a road or street of which only a part is repairable by the inhabitants at large (in determining liability for paving expenses).

In *R.* v. *The United Kingdom Electric Telegraph Co., Ltd.* (1862), 3 F. & F. 73, a case tried before Martin, B., and a special jury at Aylesbury, the learned judge read a written statement which he told the jury he had prepared "after having considered the subject," as follows:—

> "In the case of an ordinary highway, although it may be of a varying and unequal width, running between fences on each side, the right of passage or way, *primâ facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to use of the entire width of it as the highway, and are not confined to the parts which may be metalled or kept in repair for the more convenient use of carriages or foot passengers."

That judgment was the basis of the "entire width" presumption which has been adopted by the courts ever since. It has been cited in numerous cases, including the *Chorley Case* cited above, where it was held that the issue would depend upon evidence. In the same year, in *Chippendale* v. *Pontefract Rural District Council* (1907), 71 J.P. 231, the owner of land adjoining a highway enclosed a ditch on the road side of a post and rail fence dividing his land from the highway. Originally it was bounded by an old hedge for which he had substituted the post and rail fence. The ditch in this case was a dry ditch and it was held, upon the evidence, that the plaintiff's proper boundary was the side of the ditch nearest the highway. The defendant council, on the contention that the ditch formed part of the highway, pulled down the post and rail fence. The court held that they were trespassers and granted an injunction and damages.

The legal position therefore would now appear to be clearly established and the series of cases cited above should be noted by local authorities intent upon widening highways by filling roadside ditches—wet or dry—on the assumption that they are necessarily part of the highway.

A pamphlet entitled "Town and Country Planning: Extracts from the Annual Report of the Ministry of Health for 1937–38," has been published by H.M. Stationery Office, price 9d. The pamphlet contains a general review of the position of planning schemes throughout the country, and includes notes on the preservation of the countryside, local administration and compensation and betterment. There is also a record of about forty interesting decisions on appeals made to the Minister by intending developers.

Company Law and Practice.

Prospectuses Issued before the Incorporation of a Company.—I.

A PURCHASER of chattels who desires to sue the vendor in respect of matters arising out of the sale may frame his action in a number of different ways. If there has been innocent misrepresentation inducing the purchase and *restitutio in integrum* is still possible he may bring his action for rescission; if the misrepresentation was fraudulent he may claim damages for deceit; if the contract of sale contained terms in the breaches of warranties which he considers to have been broken he can sue for breach of such warranties. The position, however, is quite different in the case of a person who subscribes for shares in a limited company. Whatever his grounds of complaint, rescission would appear to be his only remedy and the reason for this is set out in the headnote to the case of *Houldsworth* v. *City of Glasgow Bank*, 5 A.C. 317, which reads as follows: "A person purchasing a chattel or goods, concerning which the vendor makes a fraudulent misrepresentation, may on finding out the fraud elect to retain the chattel or goods and shall have his action to recover any damages he has sustained. But the same principle does not apply to shares or stock in a joint stock company, for a person induced by the fraud of the agents of a joint stock company to become a partner in that company can bring no action for damages against the company whilst he remains in it; his *only* remedy is *restitutio in integrum* rescission of the contract; and if that becomes impossible . . . his action for damages is irrelevant and cannot be maintained."

In that case the House of Lords was concerned only with an action for deceit or its Scottish equivalent, but it is, I think, reasonably apparent from the judgment of the Earl of Cairns, L.C., that the principle would be the same in an action by a shareholder against a company for breach of warranty contained in the contract in virtue of which he became a member of the company. In both cases he would be, as the learned Lord Chancellor says, "in substance, if not in form, taking the course which is described as approbating and reprobating, a course which is not allowed either in Scots or English law."

That a person who has subscribed for shares in a company and who then seeks to impeach the transaction has only the remedy of rescission is of some importance in considering the effect of applications for shares in a company made on the basis of a prospectus issued before the incorporation of the company. Such a state of affairs will often arise in the case of sub-underwriters who, in reliance on a prospectus issued before the incorporation of the company, authorise underwriters in certain circumstances to apply for shares in the company in their names. Obviously where such a contract to take shares is entered into, there are difficulties in the way of bringing an action for rescission against the company on the ground of misrepresentations contained in a prospectus issued before the incorporation of the company. In many of such cases, however, the form of the application for shares will be such that the terms of the final prospectus issued by the company after its incorporation, and which the person applying for shares may never have seen, will be incorporated as terms of the contract to take the shares applied for. This will not necessarily make the position as regards misrepresentation any simpler, for the plaintiff must show that the misrepresentations on which he relied were false, but if the shares allotted to the applicant turn out to be different to those described in the final prospectus, and consequently in the contract under which the shares are allotted, what is the applicant's remedy for this breach of contract? As we have seen, he can probably not sue the company for damages which, in the ordinary case, would be the appropriate remedy for such a breach of contract, but there are in the books some cases which suggest that an aggrieved subscriber for shares may be entitled to rescission, not on the grounds of misrepresentation, but of breach of contract. For example, in *Re Russian (Vyksounsky) Iron Works, Stewart's Case*, L.R. 1 Ch. 574, Stewart had applied for shares on the faith of a prospectus, issued before the company was incorporated, which set out the objects of the company as being of a much narrower character than those revealed by the memorandum of association of the company once it was formed.

In dealing with his right on that ground to be removed from the register, Sir J. G. Turner, L.J., agreeing in the opinion formed by Wood, V.-C., that he was entitled to have his name removed, appears to ground that right in contract merely, for he says, after examining the circumstances of this case: "There is therefore a most important and substantial difference between the contract, on the footing of which this gentleman entered into the company, and the effect which is attempted to be given to that contract by the memorandum of association."

Karberg's Case [1892] 3 Ch. 1, was a case in which the facts were somewhat similar, but the ground for the decision is not easy exactly to determine. Prior to the incorporation of the company the promoters had issued a prospectus in which it was stated that certain persons had agreed to become members of the council of administration of the proposed company. In reliance on this prospectus, Karberg made application for shares in the intended company. Three days afterwards the company was incorporated, and, shortly after, the shares which Karberg had applied for were allotted to him. Subsequently Karberg discovered that some of the persons named as members of the council of administration had never agreed to be such, and he applied to have his name removed from the register of the company. It was held by the Court of Appeal, reversing Kekewich, J., that his name should be removed from the register on the ground that he had applied for the shares on the faith of an innocent misrepresentation. The difficulties in the way of the court so deciding are, of course, obvious. The action was against the company for rescission, and at the time the misrepresentations complained of were made and relied on the company was not even in existence. Dealing with this question in his judgment, Lindley, L.J., says: "Speaking generally, there is no doubt that a misrepresentation in order to vitiate a contract must be made by a party to it or by his agent. But this rule is not without exception. *Stewart's Case*, *supra*, and *Downes* v. *Ship*, L.R. 3 H.L. 343, warrant the proposition that an application to a company, when formed, for shares, based upon a prospectus issued by the promoters of the company before its formation, cannot be dissevered by the company from such prospectus. The offer to take shares is an offer to take them on the terms of the prospectus and on no other terms; and the acceptance of the application by the allotment of the shares is the acceptance of the offer on those terms and not on other terms." Consequently, though the company was not liable for damages, not having made the representation by itself or by its agents, yet as regards rescission of the contract the company was in the same position as if it had itself made the representation which was relied on without knowing it to be untrue. In this case the application for the shares contained no reference to the draft prospectus issued before the incorporation of the Company on which Karberg was able to prove he had relied, and there was therefore no suggestion that Karberg was able to rely on a breach of the contract which he had entered into, and the reference in the judgment of Lindley, L.J., would appear to suggest that *Stewart's Case* was merely based on the same ground of misrepresentation as *Karberg's Case*. There has always been, however, a certain amount of doubt as to the reason for the decision in *Karberg's Case*, and next week I intend to deal with the various subsequent cases in which it has been referred to. In particular, the case of *Lynde* v. *Anglo-Italian, etc., Co.* [1896] 1 Ch. 178, affords grounds for

saying that *Stewart's Case* was not merely a case of misrepresentation, but all the cases seem to show that in certain circumstances a person may rely in an action for rescission on representations made prior to the incorporation of the company.

A Conveyancer's Diary.

Funds set aside to indemnify Executors against Covenants in Leases held by Testator. Distribution where Claim against Executors Statute Barred.

In a recent case the point arose as to the payment out of court of a fund which had been paid in to meet the possible liabilities of a deceased in respect of leaseholds, and particularly whether the fund should be retained after any liability, so far as the executors were concerned, had become barred by the Statute of Limitations.

The case to which I refer is *Re Lewis: Jennings* v. *Hemley* [1938] W.N. 355. It appears from the W.N. report that one Jemima Lewis, by will made in 1886, appointed H.T.B. and A.H. executors and trustees thereof and bequeathed certain leasehold property to C.W. and the residue of her estate equally between C.W. and E.B. The testatrix died in 1890 and her will was duly proved. H.T.B. died later in the same year. Part of the estate of the testatrix consisted of leasehold property held on long leases, which in 1937 still had some years to run, containing the usual repairing covenants. A.H. died in 1906. An action for administration of the estate was commenced in 1891, and in that year an order was made for the payment of £5,000 into court as a fund out of which to indemnify the estate of A.H. against any liability to which he might be subject on the repairing covenants in the leases. The order contained a statement that all the debts and legacies of the testatrix had been paid in full.

In 1937 a petition was presented for the payment of the fund in court, or so much thereof as was not required for the indemnity, to the beneficiaries. An inquiry was ordered as to what sum was necessary to provide the indemnity, and on that inquiry it was contended that no sum was now needed for that purpose, any liability incurred by A.H. having become barred by the Statute of Limitations.

It could hardly be contended that any action would lie at the present time against the executors of H.T.B. or A.H.; the Statute of Limitations would have been a complete answer to any such proceedings. The only principle upon which the fund could have been retained in court would be that the fund was available to answer any claims of the lessors, and not only as a protection to the executors.

There are some authorities relative to the matter to which I may refer.

In *Re Nixon: Gray* v. *Bell* [1904] 1 Ch. D. 638, the facts, so far as material, were that a testator had at one time been a lessee of certain property under leases containing onerous covenants in respect of which he remained liable at his death either as being the original lessee, or as having been an assignee thereof and having entered into the usual covenants for indemnity. None of the leases were, however, held by him at the date of his death, and consequently none of them passed to his executors. On the one hand it was contended that, as the leases in question never vested in the executors, and therefore there was no privity of estate between the lessors and them, which could render the executors personally liable, the court would not set aside any fund to meet the possible future liability of the testator's estate. On the other hand, it was argued that, although the executors were under no personal liability, there was a contingent liability to the lessors which the estate of the testator might be called upon to meet, and that a fund should be set aside to answer that liability.

Byrne, J., examined the authorities at some length and pointed out that they were not altogether satisfactory.

The learned judge came to the conclusion, however, that a fund should not be set aside to meet the contingent liabilities. His lordship said, in the course of his judgment: "Notwithstanding the industry of counsel, no case has been produced by which it can be shown that assets have ever been retained unless in a case where there is privity of estate between the executors and the lessors . . . The lessors have not, by virtue of their contracts between landlord and tenant, bargained for any right to have property retained out of the testator's estate to answer future liabilities."

The next case is *Re King: Mellor* v. *South Australian Land Mortgage and Agency Co.* [1907] 1 Ch. 72.

That was not a case regarding obligations under covenants in a lease, but was concerned with liability in respect of partly paid-up shares in a company.

The testatrix in that case held shares in a limited company which had not been fully paid up, and the question was whether a fund should be set aside to meet future possible calls by the company, or whether the court would direct a distribution of the estate without reference to such future contingency.

There was not, of course, in that case any question of privity of estate (or, indeed, privity of contract) between the company and the executors and it was not contended that the executors would not be fully protected if an order for distribution was made. The point was whether the court would make such an order without directing funds to be set aside to meet the liability should a claim be made at any future time.

Neville, J., also said that the authorities were in a very unsatisfactory state, but after an exhaustive review of them, referred particularly to the decision of Byrne, J., in *Re Nixon*, and said: "That I understand to apply in all cases where there is not a personal liability on the part of the executors to pay out of their own moneys the claim of the creditor."

The actual order in that case was for an inquiry, but on the point under consideration it is plain that Neville, J., agreed with the decision of Byrne, J., in *Re Nixon*.

In *Re Blow: Governors of St. Bartholomew's Hospital* v. *Cambden* [1914] 1 Ch. 233, the facts were that the lessee under certain leases from the plaintiffs died in January, 1902, having specifically bequeathed the leaseholds to his wife for life, and after her death to his children. The residue was bequeathed to his wife and children in equal shares. In October, 1902, the executors distributed the residue amongst the beneficiaries, taking from them an indemnity in respect of the covenants and liabilities under the leases, but not otherwise providing for the satisfaction of these claims. In 1906 one of the executors died. After 1909, the rent under the leases fell into arrear. In 1911, the plaintiffs commenced a creditor's administration action against the surviving executor and the beneficiaries, to which action the executors of the deceased executor were subsequently added as defendants.

It was held by the Court of Appeal (Cozens-Hardy, M.R., and Swinfen Eady, L.J., Phillimore, L.J. dissenting), and reversing the decision of Warrington, J., that as against the executors of the deceased executor the action, although in form a common creditor's administration action, was in reality an action the whole object of which was to recover money within the meaning of s. 8 (1) (*b*) of the T.A., 1888, and that under the provisions thereof lapse of time afforded those defendants a good defence.

To return to *Re Lewis*, Simonds, J., having referred to the authorities, said that it was established that a fund paid into court in the circumstances obtaining in that case was so paid in, not for the benefit of the lessors, but solely for the protection of the executors or trustees and his lordship continued: "The lessor as a possible future creditor has no

right to require the provision of such a fund. The executors have a complete answer to any claim that might be made against them for it is barred by the Statute of Limitations." There was, therefore, an order for payment out to the beneficiaries.

Landlord and Tenant Notebook.

Nature of Term Evidenced by Custom.

For landlord-and-tenant purposes the law as to the admissibility of evidence of custom is, I think, most clearly laid down in and illustrated by *Webb* v. *Plummer* (1819), 2 B. & Al. 746, in which an outgoing tenant of a South Down farm unsuccessfully sued the incomer for customary foldage. Under his lease, the plaintiff had covenanted that he would at all times during the term fold his flock which he should keep upon the demised premises, upon such parts thereof where the same had usually been folded; also to carry the manure to such parts of the premises as should be appointed by the landlord or by the incoming tenant. Also, while the instrument provided for certain payments, foldage was not among them. As Bayley, J., put it: "Where there is a written agreement between the parties, it is naturally to be expected that it will contain all the terms of their bargain; but if it is entirely silent as to the terms of quitting, it may let in the custom of the country as to that particular. If, however, it specifies any of those terms, we must then go by the lease alone. The custom of the country applies to those cases only where the specific terms are unknown . . ."

Among the more important subjects on which parties are apt to be silent, that of mode of determination is undoubtedly prominent; that is, of course, when the term is not a fixed one. The presumption that the holding is from year to year when the rent is made payable quarterly or less frequently has had to be invented to meet the consequences of this reticence. The presumption that when rent is made payable monthly or weekly the tenancy is determinable by a month's or a week's notice respectively is equally strong; and any practitioner who was told by a client that he paid rent weekly by agreement and was asked what notice he should give or receive would be inclined to answer "A week's notice" without further ado.

There is, however, authority, in the shape of an Irish decision, that custom may rebut even this presumption. The case in question was *Lundy* v. *Reilly* (1858), 30 L.T. 223, an action for ejectment. It appeared that the premises concerned were used as a vintner's establishment and had been so used ever since the defendant's tenancy commenced in 1836. On the death of the original landlord the original tenant made an agreement with his successor which was evidenced by a writing in these terms: "I agree to pay the weekly rent of 13s. 5½d. to Mrs. L. [the plaintiff] or her representatives for the house No. 35, etc., the said rent to be payable weekly, and commencing payment therefor on the etc." Later, the original tenant assigned his interest to the defendant, and we gather—though the report does not state it *totidem verbis*—that the plaintiff gave him a week's notice to quit before suing for possession.

The defendant's case was that the premises were licensed premises, that the licence was an annual one, that the licence duty was payable in advance, and that he had so paid it, and he called evidence to show that the custom of the trade was that in such circumstances the tenancy was deemed to be a yearly one. The issue was left to the jury, who found for him. On the question whether the evidence was admissible, a new trial was sought, the argument for the plaintiff being that such evidence had not helped to interpret the agreement and was inconsistent with its terms. But it was held that the agreement was silent on the matter in controversy, and consequently that the evidence had been rightly received.

Webb v. *Plummer*, *supra*, was, of course, cited in the above case, and duly distinguished. Another authority which was likewise invoked by the plaintiff and likewise distinguished by the court was *Re Stroud* (1847), 8 C.B. 178, the facts of which resembled those before the court more closely, though, as it transpired, they differed in the one vital particular. The case was one in which the tenant of a brickfield under a tenancy agreement expressed to be yearly proposed, on the occasion of compulsory acquisition of the demised premises, to call evidence of a custom by which such tenancies continued till the mineral was exhausted, and to show that no prudent tenant would accept an arrangement which would give him less in the way of security of tenure. In the face of the express agreement, however, it was held that such evidence was inadmissible.

Lundy v. *Reilly*, *supra*, has had no counterpart in England; but, apart from the question of admissibility of evidence of custom, it serves as a useful reminder of the fact that the frequency with which gales of rent become due is not an infallible guide to the period of a periodic tenancy. True, the presumption that the period for notice to quit is, in the absence of agreement to the contrary, the same as that of the period of the rent is a strong one; and, since the decision in *Ladies' Hosiery and Underwear Ltd.* v. *Parker* [1930] 1 Ch. 304, C.A., it is rather stronger than it used to be. For in that case it was held—or, to be accurate, it was said, by Maugham, J. (who decided the matter on another ground, and was upheld on that ground) that when a tenancy for a term of years at a weekly rent expired and the tenant held over, the new tenancy would be a weekly one, and not a tenancy from year to year. The premises in that case were not such as would be the subject-matter of any custom.

Again, apart from custom, the danger of attempting to infer the nature of a term from the intervals at which rent is payable was emphasised by two cases at the commencement of the century: *Adams* v. *Cairns* (1901) 85 L.T. 10, C.A., and *Zimbler* v. *Abrahams* [1903] 1 K.B. 577, C.A. In the former it appeared that one T, tenant of a shop under a lease due to expire at Midsummer, 1901, had sub-let it to the plaintiff in January, 1900, executing the following document: "I shall be pleased to accept you as tenant for barber's shop at the rental of 7s. per week, the rent not to be raised during my present tenancy." The plaintiff paid an outgoer £20, and laid out £15 on the premises. At Michaelmas of the same year T surrendered the head term to the superior landlord, the defendant in the action, who promptly gave the plaintiff a week's notice to quit and followed it up by conduct which led to an action for trespass and a declaration. It would be interesting to know on what ground judgment was given for the defendant at first instance, when it was held that the tenancy was a weekly one, but there is no report of the proceedings, and the line taken is not referred to in the judgments of the Court of Appeal where the judgment was set aside. The proper inference, it was then held, was not that the tenancy was from week to week. There was, as already mentioned, no evidence of custom; but one wonders whether the expenditure of £35, which was at least referred to in one of the judgments, was not of the facts which prevented the usual inference from being drawn.

In *Zimbler* v. *Abrahams* discussion centred round another home-made document, the work of a landlord's agent who little thought, at the time, that it would one day be argued by eminent counsel whether it was a memorandum of a past agreement or a feoffment not evidenced by deed. The defendant had undoubtedly been a weekly tenant for some time when the agent wrote and signed the following: "I the undersigned . . . have let to Mr. Abrahams the house situate at . . . at a weekly rental of 23s., and I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to

return him the £6 he has paid me on taking possession of the house." Notice to quit was given by the landlord some five years later, and the question then arose what was the effect of the above writing. No evidence could, of course, be tendered to show that the property was such as is usually let by the week, though there can be little doubt that this description applied. In the result it was held that no immediate interest in land was created, owing to the absence of a seal; but that in equity it was to be treated as an agreement to let, and that not merely from week to week: for that would be to give effect to the earlier part of the agreement and none to the latter portion. And the defendant was treated as having answered the claim by a counter-claim for specific performance of an agreement for a lease for his life, to which he was entitled, being given fourteen days to set, as it were, his house in order.

Our County Court Letter.

WINTER KEEP OF HEIFERS.

In a recent case at Market Harborough County Court (*Perkins* v. *Popple*) the claim was for £6 17s. 6d. as the cost of winter keep of five heifers, including 30s. for bull service. The counter-claim was for £67 13s. as damages for breach of contract. At a previous hearing, the defendant had admitted the claim in order to obtain an adjournment. His case was that he had agreed to pay 2s. 6d. per head per week for winter keep, with plenty of hay. The animals went on the plaintiff's land on the 22nd November, 1937, but in January, 1938, they were thin and weak owing to lack of forage. The animals were accordingly removed, and £19 10s. was claimed for a heifer which died, £40 for the loss in value of the survivors, £5 for special food and £3 3s. as the veterinary surgeon's fee. The defence to the counter-claim was that the beasts looked badly reared on arrival, and they had had the same food as the plaintiff's own animals. A witness admitted, however, that the heifers were sometimes only fed once a day, and were given no hay in the evening if there was some left from the morning. His Honour Judge Galbraith, K.C., observed that the plaintiff was not strictly entitled to succeed on the claim. This had been admitted, however, by what might be described as the fortune of war. Judgment was given for the defendant on the counter-claim for £58 and costs.

NUISANCE FROM BARKING DOGS.

In *Mallock* v. *Mason and Wife*, recently heard at Basingstoke County Court, the claim was for £20 damages, and an injunction in respect of a nuisance caused by the continuous barking and whining of dogs. The case for the plaintiff was that he had lived for fifteen years at Nately Hatch, Hook, and the nuisance had come to him, and not *vice versa*. Three years ago the female defendant became tenant of a neighbouring house, and in October, 1937, her husband (the male defendant, who was a dog-breeder) brought a collie dog to the house. No trouble arose until the 22nd November, when a second collie was brought to the premises. Thereafter the plaintiff was disturbed by the barking of the dogs during the night, and two more collies were afterwards brought to the kennels. The latter were about 30 or 40 yards from the plaintiff's windows, and his suggestion that there was room elsewhere in the defendant's garden (which comprised three-quarters of an acre) was not accepted. The defence was a denial of nuisance, and corroborative evidence was given by neighbouring residents. His Honour Judge Barnard Lailey, K.C., observed that the principles laid down in *Colls* v. *Home and Colonial Stores* [1904] A.C. 179, were applicable. That was a case relating to light, but the same standards governed cases relating to noise, viz., was the plaintiff deprived, by the acts of the defendant, of the comfortable use and enjoyment of his house according to the ordinary notions and habits of mankind? The plaintiff was accustomed to retire late and to sleep until 8.30 a.m., but persons must expect noises to occur before that hour. Nevertheless he had complained of noises at all hours of the night, and the nearest witness for the defence lived twice as far away as the distance from the kennels to the plaintiff's house, besides living on the other side of a main road. Proximity was of the essence in such cases, and it was not immaterial that the dogs were not kept for protection or pleasure or other domestic purposes, but in the way of trade. Judgment was given for the plaintiff for £5 damages, and an injunction was granted restraining the defendant, their servants and agents, from keeping dogs so as to cause a nuisance by noise between midnight and 7 a.m., with costs on Scale C.

Practice Notes.

CONTRIBUTION BETWEEN TORTFEASORS.

"I have searched in vain through the 2,777 pages of the White Book, and the 74 pages of the supplement, to discover any rule which gives the judge power to do so sensible a thing."

In an action for damages for negligence brought by an administratrix against two defendants, one defendant served upon the other a third-party notice claiming contribution. An order was thereupon sought from the master that either defendant might write to the other making an offer on a percentage basis, such notice to be treated—in the third-party proceedings between the defendants—as notice of payment into court. The Court of Appeal held—the words are the words of MacKinnon, L.J.— that there was no power to make this order: *Sigley* v. *Hale and Another; Wilson, third party* [1938] 2 K.B. 630; 82 Sol. J. 493. The forthright observations of MacKinnon, L.J., might well be considered (it is suggested with respect) by the Rule Committee.

John Sigley was a pillion passenger on Wilson's motor-bicycle which, owing to the negligence of both drivers (it was alleged), collided with a motor car driven by Mrs. Hale; Sigley was killed. Mrs. Hale served a third-party notice on Wilson, claiming contribution from him, if she were found negligent. She applied to the master for directions and for the order above set out. By s. 6, Law Reform (Married Women and Tortfeasors) Act, 1935, any tortfeasor liable may recover contribution from any other tortfeasor who is, or would, if sued, have been liable; the court, having regard to the responsibility, is to give such amount as is "just and equitable."

Under the old r. 2, Ord. XXX (in force until 17th December, 1937), orders of the kind sought had frequently been made. That rule gave the master power to make "such order as may be just with respect to all the proceedings . . . and more particularly with respect to the following matters"—pleadings, particulars and other interlocutory matters are specified. The new rules revoked r. 2 and substituted a more restricted rule:—

> "Rule 2. (1) Upon the hearing of the summons the powers of the court or a judge shall include those specified in this rule.
>
> (2) The court or a judge may—
>
> (*a*) make such order as may be just with respect to any of the following matters, that is to say, discovery and inspection of documents, interrogatories, inspection of real or personal property and admissions of fact or of documents."

According to Greer, L.J., the word "include" only means "a saving of any other rules of court under which it might be suggested that this order could be made. I know of no such rules." If that be the true meaning, however, is not the sub-rule mere surplusage?

Slesser, L.J., thought that the new rule curtailed the jurisdiction. In *Davies* v. *Scott Lewis* [1918] W.N. 166, the Court of Appeal said that the old r. 2 "gave a very wide power

to the court and should be liberally construed." In that case, the defendant, while admitting negligence, denied damage: the action was ordered to be tried without pleadings, the defendant to be at liberty to pay into court, with a notice denying liability. Under the rules as they then stood, a payment with a denial of liability could only be made with the defence; the court, under the old r. 2, ordered the notice denying liability to have the effect of a defence denying liability.

The new rule limits the generality of the old. But was this the real intention? The object (it was thought) of the abolition of the New Procedure List as such was to extend the benefits of the wide powers of the court under that procedure to actions generally. This, at least, is the impression to be derived from a careful comparison of the language of sub-r. (2) with the powers under the old Ord. XXXVIIIA, r. 8 (2), previously possessed by the new procedure judge. Did the Rule Committee really intend to curtail the wide powers "with respect to *all* the proceedings" previously conferred by the old r. 2? If nay, *Sigley* v. *Hale* discloses a *casus omissus*; if yea, the words of MacKinnon, L.J., would suggest that the rule might, with advantage, be amended.

Reviews.

Six Vital Acts of 1938, *Annotated, with an Appendix of Rules, Forms, etc.* By SIDNEY H. NOAKES and LAURENCE TILLARD, Barristers-at-Law. 1938. Royal 8vo. pp. xxxviii and 260 (Index 23). London: Hamish Hamilton (Law Books), Ltd. Price 21s.

A number of novel and important changes in the law have been effected this year, and the editors and publishers of this work deserve congratulation on account of the promptness with which they have issued it. Each Act is preceded by an introductory note setting out concisely the general law on the topic dealt with and the effect of the Act. The annotations contain full references not only to important cases and statutes, but also to standard text-books on the subjects dealt with. In addition to the usual indexes there is a table of standard text-books referred to in the text, with the page references in the present volume and in the standard work in parallel columns. This work deals efficiently with such a diversity of subjects as Rent Restrictions, Evidence, Leasehold Repairs, Hire-Purchase, Family Inheritance and the Administration of Justice, and should prove a useful guide to those who wish to keep abreast of the latest enactments.

Books Received.

The Constitutions of All Countries. Vol. I. The British Empire. 1938. Royal 8vo. pp. vii and (with Index) 678. London: H.M. Stationery Office. 10s. 6d. net.

Palmer's Company Precedents. Part III. Debentures and Debenture Stock. Fifteenth Edition, 1938. By ALFRED F. TOPHAM, LL.M., Bencher of Lincoln's Inn, one of His Majesty's Counsel, and A. M. R. TOPHAM, B.A., of Lincoln's Inn, Barrister-at-Law. Royal 8vo. pp. cx and (with Index) 1032. London: Stevens & Sons, Ltd. £2 15s. net.

Income Taxes in the British Dominions. Second Edition. 1938. Supplement No. 4. Compiled in the Inland Revenue Department, London. London: H.M. Stationery Office. 5s. net.

The Law relating to Contracts of Local Authorities. By CECIL BROWN, LL.B., Solicitor of the Supreme Court, formerly Town Clerk and Clerk of the Peace of Cardiff, and GLANVILLE BROWN, of the Middle Temple, Barrister-at-Law. 1938. Demy 8vo. pp. xxxi and (with Index) 437. London: Hadden, Best & Co., Ltd. Price 27s. 6d.

Reminders for Company Secretaries. By HERBERT W. JORDAN, Company Registration Agent. Seventeenth Edition. 1938. Demy 8vo. pp. viii and 67. London: Jordan & Sons, Ltd. 2s. 6d. net.

Report of the Commissioners of Prisons and the Directors of Convict Prisons for the year 1937. 1938. London: H.M. Stationery Office. 2s. net.

The Law of Food and Drugs, 1938. By W. IVOR JENNINGS, M.A., LL.D., of Gray's Inn, Barrister-at-Law, and GEORGE J. COLE. 1938. Royal 8vo. pp. li and (with Index) 236. London: Charles Knight & Co., Ltd. Price 25s.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool, Manchester and Birmingham.]

Obituary.

SIR CECIL BRETT.

Sir Cecil Michael Wilford Brett, C.S.I., a former Judge of the High Court, Calcutta, died at his home at Silchester on Saturday, 12th November, at the age of eighty-six. He was educated at Cheltenham College, and was called to the Bar by the Middle Temple in 1884. He was appointed Registrar of the Calcutta High Court in 1886, became a District and Sessions Judge in 1891, and in 1900 he was raised to the High Court Bench at Calcutta. He was made C.S.I. in 1906, and he received the honour of knighthood in 1911. He retired in 1913.

MR. J. ROLT, K.C.

Mr. James Rolt, K.C., of New Square, Lincoln's Inn, W.C., died at Wokingham on Thursday, 10th November, at the age of seventy-eight. Mr. Rolt was educated at Eton and University College, Oxford, and was called to the Bar by the Inner Temple in 1886. He practised in the Chancery Division, taking silk in 1914, and became a Bencher of the Inner Temple in 1922. He retired in 1927. Mr. Rolt was treasurer of the Barristers' Benevolent Association for many years.

MR. W. E. VERNON.

Mr. William Edward Vernon, M.A., B.C.L., Barrister-at-Law, of Stone Buildings, Lincoln's Inn, W.C., died on Monday, 14th November, in his seventy-fifth year. Mr. Vernon was called to the Bar by the Middle Temple in 1889.

MR. F. M. D'ARCY.

Mr. Francis M. D'Arcy, retired solicitor, of Bridgnorth, died on Thursday, 10th November, at the age of seventy-three. Mr. D'Arcy was admitted a solicitor in 1888, and had lived at Bridgnorth since 1914. He retired several years ago. He was a commissioner of taxes.

MR. J. FARDELL.

Mr. John Fardell, solicitor, senior partner in the firm of Messrs. Fardells, of Ryde, Isle of Wight, died at his home at Brading on Friday, 4th November, in his seventy-fourth year. Mr. Fardell was admitted a solicitor in 1887, and took over his father's practice in 1896. He was Clerk to the Isle of Wight county magistrates and the Ryde borough magistrates for many years. He was also Registrar and High Bailiff of the Isle of Wight County Court.

MR. W. H. GIBBS.

Mr. Wilfred Henry Gibbs, solicitor, head of the firm of Messrs. Spottiswoode Clarke, Gibbs & Co., of Doncaster, died at Scunthorpe on Monday, 14th November, at the age of twenty-seven. Mr. Gibbs, who was admitted a solicitor in 1935, was with Messrs. R. A. C. Symes & Co., of Scunthorpe, before he acquired his practice at Doncaster.

To-day and Yesterday.

LEGAL CALENDAR.

14 NOVEMBER.—On the 14th November, 1789, Sir Hay Campbell took his seat as Lord President of the Scottish Court of Session with the title of Lord Succoth, derived from his ancestral domain. For nineteen years he held the post in the enjoyment of the respect of the legal profession, and after his retirement he survived another fifteen years to preside over two commissions appointed to inquire into the state of the courts of law in Scotland.

15 NOVEMBER.—On the 15th November, 1892, Thomas Neil Cream, the maniac murderer of Lambeth, was hanged at Newgate. Drug fiend, blackmailer, abortionist, poisoner, sexual degenerate all through his life, this sinister doctor was a proper study for the criminologist. No one can tell with certainty how many lives he destroyed in England and America. It was his sadistic exploits in poisoning unfortunates of the Lambeth streets that brought him to the gallows at the age of forty-two. He spent his last night restlessly and almost sleeplessly, but at the end he was calm, thanking the prison officials for their kindness to him.

16 NOVEMBER.—On the 16th November, 1670, William Player, a barrister of Gray's Inn, was expelled from the Society. Having been put out of Commons for some offence, he had come into Hall during dinner together with another member and "both in a very factious, riotous and seditious manner and with force attempted to take the officer attending the Bench and did assault the officer and forced the Bench to rise to rescue their officer."

17 NOVEMBER.—On the 17th November, 1817, Abraham Thornton, suspected murderer, made legal history when, in answer to the prosecution of the friends of the girl he was supposed to have killed, he flung a gauntlet on the floor of the Court of King's Bench and claimed his right to wage battle. "In his new black coat, drab coloured breeches and gaiters, he presented the appearance of a respectable farmer," his clothes emphasising the incongruity of his knightly gesture. The dead girl's brother on whom it was incumbent to take up the gage and hazard himself in combat was a youth of poor physique and timid disposition, wholly unfit to match his burly opponent. After turning over the matter for five months, the court decided that Thornton must go free. In the sequel Parliament abolished trial by battle.

18 NOVEMBER.—When Andrew Macrae was put on trial at Northampton for murder in 1892, a strange incident interrupted the case. After the midday adjournment it was found that one of the jurymen was missing. Innocently unconscious of the stringent rules of his service, he had slipped out to post a letter, and gone home to lunch. Kennedy, J., newly on the Bench, was puzzled and adjourned till the morrow to consult his brethren in London. On the 18th November, fortified by their advice, he severely rebuked the juror, whom he fined £50, and disbanded the jury. Macrae had to wait another month for his conviction.

19 NOVEMBER.—On the 19th November, 1873, Sir John Coleridge, till then Attorney-General, took his seat as Chief Justice of the Common Pleas.

20 NOVEMBER.—On the 20th November, 1880, Lord Chief Justice Cockburn presided in court with his usual brilliancy. He was nearing his seventy-eighth birthday, and though for two years past his health had not been quite as robust as formerly, he still seemed in excellent condition. After the day's work he walked home to 40, Hertford Street, Mayfair, and dined as usual. So ended his life. About midnight he was taken with an attack of angina pectoris and in fifteen minutes he died.

THE WEEK'S PERSONALITY.

Lord Chief Justice Coleridge has been described as "polished as a diamond and no more tender." Tall and handsome, and possessing an exceedingly beautiful voice, he made an imposing figure in court till old age afflicted him with fits of untimely somnolence. Effortlessly he could at will produce an extraordinary sense of solemnity, and the refinement of his language in no respect took away from the force of his utterances. He was known as "the silver tongued," but that tongue had a deadly satirical skill. He prided himself on the correctness of his language and enforced a similar propriety on all who appeared in his court. When a counsel on one occasion said that a certain company had "come to grief," the Lord Chief Justice sternly said: "What do you mean? Please do not use slang in my court." As an elocutionist he was unrivalled in his time, and it was of him that someone said: "I should enjoy listening to Coleridge even if he only read a page out of Bradshaw." In conversation his wit and his endless fund of anecdotes made him the most entertaining of companions. His classical brilliance matched his legal attainments, while, always observing the principle *suaviter in modo*, he was never in manner less than the high-bred gentleman.

"TRUTH UNADORNED."

Legal proceedings in America have all the charm of the unexpected, but even in Los Angeles a surprised and gratified sensation was caused among the spectators when a comely young lady (so it is reported) appeared in court clad only in a bathrobe. "What does this mean? Who is this woman?" cried the judge. "This is unadorned truth," replied the vision. "This bathrobe is all I possess. My husband took all my clothes away with him when we separated. I want divorce and clothes." In California "unadorned truth" seems to have met something of that success which it once achieved before an Athenian tribunal, for an order for £7 a month alimony *pendente lite* was forthwith made. Perhaps the husband in the case was confusing the present state of the law with that stage of legal evolution illustrated by the story of the early Victorian lady called into court to identify various articles of feminine underwear stolen from her home by a burglar then on trial. "They are my property," she said, but Mr. Justice Patteson was a purist in terminology. "You identify them, dear madam," he said, "but they are not your property." "Yes, my lord, they are." "No, no. You wear them and you know them, but those chemises are your husband's." "My husband's? No, my lord; my husband doesn't wear such things." "No, no; I tell you they are your husband's. But it's no use talking. Women won't understand these things."

LEGAL THEORY.

Once upon a time, it was widely believed that if a husband took nothing with his bride he escaped legal liability for her pre-nuptial debts. Thus a cautious husband might sometimes seek to protect himself by marrying his love more or less in her birthday suit. At one of the weddings celebrated in the disreputable purlieus of the Fleet Prison, it is recorded, "the woman ran across Ludgate Hill in her shift," that her theoretical destitution might be established. A recent police court case in which it was stated that a man had been given £35 and a new suit to confer British nationality on a refugee Jewess from Germany by marrying her seems to foreshadow a revival of other features of Fleet marriages—the theoretical husband. In the eighteenth century, desperately indebted spinsters would fly to the Fleet and find a volunteer ready to oblige at the ceremony and vanish immediately with the legal burden of her debts. The marriage certificate defeated the creditors.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Revocable Settlements.

Sir,—I have recently had occasion to study carefully the provisions of s. 38 of the Finance Act, 1938, and of Pt. II of the 3rd Sched. to that Act, and I find it very difficult to agree with the view expressed in the third paragraph of the article on "Revocable Settlements" appearing on pp. 829 and 830 of your issue of the 15th October, 1938.

The argument of the writer of the article appears to be this: Pt. II of the 3rd Sched. is expressed to apply to the years 1937–38 and 1938–39, though the benefit of sub-para. (*a*) of para. 1 thereof can only be obtained if the power to revoke has been released by the 29th October, 1938: therefore no benefit for any part of 1938–39 can be obtained if the power to revoke is released, say, on the 1st November, 1938, even though payments under the settlement may be made between the 1st November, 1938, and the 5th April, 1939: therefore the "deeming provisions" of s. 38 (1) of the Act may attach to any payments made during the latter part of the year 1938–39, even though the power to revoke has been released: therefore such deeming provisions may continue to attach in subsequent years, even though the power to revoke has been released.

I feel, with all respect to the writer of the article, that he has fallen into the error of reading the schedule first, and then of trying to reconcile the section with the schedule. Surely one should read the section first, and then try to reconcile the schedule with the section? The wording of the section is quite clear. The vital words are the words "and so long as," following the word "If" at the very beginning of the section. The only possible interpretation one can put on these words, in conjunction with the clauses which follow them, is that the "deeming provisions" do not attach once the power to revoke has been released.

The reason for the addition of the schedule is clear. If the section stood alone, and if the power to revoke under a settlement had been released at the earliest possible moment after the passing of the Act, no relief from sur-tax could by any means have been obtained in respect of payments made under the settlement during the year 1937–38, and during the part of the year 1938–39 prior to the date of revocation. Therefore the schedule was inserted to get over this difficulty, and to relieve the taxpayer, not to make things worse for him.

It is true that the position might have been a little better defined had para. 7 of Pt. II of the 3rd Sched. been worded somewhat as follows:—

> "The period to which this part of this Schedule applies to any settlement (except a settlement to which para. 1 (*b*) of this part of this schedule applies) is the year 1937–38 and the period from the 6th April, 1938, up to the date (not being later than the expiration of three months from the date of the passing of this Act) when the power to revoke is released, or the settlement is revoked and a new settlement made, as the case may be."

Perhaps the draftsman thought that this wording would be too clumsy, and that in any event the greater includes the less.

T. C. ANDREW.

Northampton Square, E.C.1.
1st November.

[A considerable number of other letters have been received disagreeing with the opinion expressed by our contributor. It is only fair to say that if the process of construction suggested by Mr. Andrew and many other of our correspondents is followed, the fear expressed by our contributor would appear to be groundless.—ED., *Sol. J.*]

Notes of Cases.

Court of Appeal.

Prestige & Co. Ltd. *v.* **Brittall.**

Greer, Slesser and MacKinnon, L.JJ.
20th October, 1938.

ARBITRATION—BUILDING CONTRACT—ARCHITECT'S REFUSAL OF CERTIFICATE—DISPUTE—JURISDICTION OF ARBITRATOR.

Appeal from Goddard, J.

A building contract made in 1933 provided for payments by the employer to the contractors on interim certificates by the architects. These certificates were to be based on measurements and reports made from time to time to the architects by quantity surveyors. By cl. 26, in case of any dispute or difference between the employer or the architect on his behalf and the contractor, either during the progress or after the completion of the works or after the determination, abandonment or breach of the contract, or as to any matter or thing arising thereunder, or as to the withholding by the architect of any certificate to which the contractor might claim to be entitled, then either party should give notice to the other of the dispute or difference, which should be referred to the arbitration and final decision of a named arbitrator. It was further provided that the arbitrator should have power to open up, review and revise any certificate and to determine all matters in dispute which should be submitted to him and of which notice should have been given in the same manner as if no such certificate had been given. From time to time interim certificates were granted by the architect and payments made, but in June, 1935, he refused to grant the tenth certificate, though the quantity surveyors had made their report, saying that in view of the many complaints made by the employer in connection with the contract he felt it his duty before issuing any further certificates to consult with him so as to ascertain whether he was satisfied with the building. He suggested that the contractors should discuss the matter with the employer. The contractors then intimated that they considered a dispute had arisen for settlement by arbitration and sent the architect a submission for his signature. The contractors also wrote to the employer informing him that they had been in correspondence with the architect regarding his failure to issue a further certificate and advising him that as the quantity surveyors had reported that there was an amount of £10,667 11s. due they expected the architect to issue a certificate for that amount. They said that the architect, ignoring his position of independence under the contract in the matter of issuing certificates, had informed them that he felt it his duty before issuing a further certificate to consult the employer. They further said that they saw no reason to trouble the employer, since if there were any question of defects or maintenance the architect had full authority to issue instructions for them to be remedied. Finally they said that they were only concerned with the failure or refusal of the architect to issue a certificate, and that as there was now a difference or dispute under the contract they gave notice under cl. 26 and intended to apply forthwith to the arbitrator to adjudicate on the claim. A copy of this letter was sent to the arbitrator. In April, 1936, the arbitrator made an award consisting of eight paragraphs. In the first he awarded that the employer should pay the contractors £7,500. In paragraphs 2 to 7 he awarded that a further £3,167 should be paid to the contractors. In paragraph 8 he dealt with the costs. It was now agreed that paragraphs 2 to 7 dealt with matters which were never within the reference. Goddard, J., upholding the award of £7,500, held that the terms of reference were wide enough to give the arbitrator jurisdiction to deal with the matter.

SLESSER, L.J., dismissing the employer's appeal, said that he had argued that the reference was specifically limited to the question whether the architect had improperly refused to

issue a certificate and that the arbitrator could not award a sum to be paid to the contractors forthwith. The question was: What was the matter which, under the letter from the contractors to the employer, was referred to the arbitrator? The effect in *Brodie* v. *Cardiff Corporation* [1919] A.C. 337, was that where an arbitrator having jurisdiction had to decide that something should have been done by the architect or engineer which had not been done, then, if the terms of reference were wide enough to enable him to deal with the matter, he might by his decision himself supply the deficiency and do that which should have been done, producing the result which should have been produced, if in his view what was not done was the only reason why the result of doing what should have been done did not follow. Thus, if, in this case, on a general consideration, apart from the actual scope of the reference, the arbitrator came to the conclusion that the certificate should have been granted he could act as if it had been granted and order the sum to be paid. In the case of *In re Nott and the Cardiff Corporation* [1918] 2 K.B. 146, there was a situation similar to the one in the present case. On a fair reading of the letter here in question the dispute was: (A) The architect has wrongly refused a certificate; (B) there is due £10,667 11s. which we cannot obtain. We ask you, the arbitrator, to settle (1) whether the certificate has or has not been wrongly refused; (2) what sum we are reasonably entitled to recover? The arbitrator was entitled to make the award for £7,500 and the terms of reference were wide enough to cover the matter. Further, it had been argued that as the other award for £3,167 was bad on the face of it, the whole award, including the £7,500 award, failed. His lordship could not come to that conclusion as the two matters were entirely severable.

MacKinnon, L.J., agreed.

Greer, L.J., concurred, expressing, however, grave doubts.

Counsel: *Sandlands*, K.C., and *Morle*; *Miller*, K.C., and *Willes*.

Solicitors: *H. W. Perkins & Co.*; *Leighton & Savory*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re Cartwright; Cartwright *v.* Smith.

Greene, M.R., Scott and Clauson, L.JJ.
1st and 2nd November, 1938.

Settlement — Settled Land — Sale — Investments Representing Realty—Whether Devolving as Personalty under Will made Abroad—Wills Act, 1861 (24 & 25 Vict., c. 114), s. 1—Settled Land Act, 1925 (15 Geo. 5, c. 18), s. 75 (5).

Appeal from a decision of Bennett, J. (82 Sol. J. 584).

In 1934, a testator resident in France, who had not abandoned his English domicile, executed a will in accordance with French law directing: "I wish at my death to leave everything to my wife." He died in 1936. Between 1915 and 1935 he had as tenant for life sold the settled land subject to his marriage settlement. A considerable part of the investments representing the proceeds of sale had been handed over to him by the trustees, who had retained sufficient to meet subsisting charges under the settlement. At the time of his death two charges to secure annuities in favour of his wife were subsisting. Under the terms of the settlement, and in the events which had happened, he had power to dispose by will of the ultimate balance of the proceeds of sale retained in the hands of the trustees. Bennett, J., held that the investments were personal estate, capable of being disposed of by the will admitted to probate under the Wills Act, 1861. Certain persons interested appealed.

Greene, M.R., allowing the appeal, said that the question was whether the investments passed under the will made in France, which by the Wills Act could only be treated as valid so far as regarded personal estate. *Primâ facie*, money representing the proceeds of sale of settled land should, in view of the Settled Land Act, 1925, be regarded as real estate. It had been argued that the Act dealing with the status of such proceeds did not convert them into real estate (s. 75 (5)), but the effect of that provision was the same as if the settlement had contained an express trust for investment in real estate (see *In re Lyne's Settlement Trusts* [1919] 1 Ch. 81). It had also been said that s. 75 (5) only effected conversion for the purpose of disposition, devolution and transmission of capital moneys under the settlement, but when the testator died the settled property was in the eye of the law real estate, and for the purposes of the Wills Act it could not be suggested that something outside the settlement was being dealt with. As to the Administration of Estates Act, 1925, whereby property which under the old law went on an intestacy to the heir now went to another class of persons, that did not prevent the application of the doctrine of conversion from arising in circumstances like the present.

Scott and Clauson, L.JJ., agreed.

Counsel: *Cleveland-Stevens*, K.C. and *Rawlence*; *Cohen*, K.C. and *T. Burgess*; *P. Brough*.

Solicitors: *Pennington & Son*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Pratt *v.* Cook, Son & Co. (St. Paul's) Ltd.

Slesser, Finlay and Goddard, L.JJ. 11th November, 1938.

Master and Servant—Packer—Wages—Meals Supplied—Legality of Contract—Truck Act, 1831 (1 & 2 Will. 4, c. 37), s. 23.

Appeal from Wrottesley, J. (82 Sol. J. 234).

The plaintiff was engaged as a packer by the defendant company's predecessors in title on terms that he should be paid 53s. a week and given dinner and tea, which the parties agreed were equivalent to 10s. a week. The wage complied with the minimum rate paid to packers in that employment, less 10s. There was no written agreement. In 1920 the defendant company took over the business. The plaintiff continued in the employment on the terms agreed, never asking to receive cash instead of the meals. He received 10s. a week extra in cash during holidays. In 1935 the arrangement was discontinued and the plaintiff was thereafter paid an additional 10s. a week. Wrottesley, J., held that the arrangement had contravened the Truck Act, 1831, which made illegal a contract whereby the wages of an artificer were made payable in whole or in part otherwise than in current coin of the realm. His lordship held that the plaintiff should recover £397 10s., the total of the sums of 10s. a week not paid to him in cash from 1920 to 1935.

Slesser, L.J., allowing the defendants' appeal, said that it was conceded that the plaintiff was an artificer within the Act. He had been remunerated partly in money payments and partly by the provision of tea and dinner under the defendants' roof, valued at 10s. a week. The judge, accepting the argument that the wages had been stopped to that extent, had held that there had been an illegal deduction. It had been conceded by the defendants in this court that, as the extra wages were not paid in current coin, ss. 1 and 3 would operate against them unless they could avail themselves of s. 23. The excepting ambit of s. 23 was not limited to matters dealt with in s. 2, but applied equally to protect contracts offending against s. 1 and payments offending against s. 3 in appropriate cases. These employers had done what s. 23 permitted, notwithstanding the *primâ facie* prohibitions of ss. 1 and 3.

Finlay, L.J., agreed.

Goddard, L.J., dissenting, said that he could not agree with the construction that s. 23 formed an exception to s. 1. The employer might supply goods or services to the workman as to any other member of the community, but he could only deduct the price from his wages for the goods or services

specified in s. 23 if the workman had agreed in writing to the deduction.

COUNSEL: *Sir William Jowitt*, K.C., *G. O. Slade* and *C. M. Kahn*; *Wallington*, K.C., and *A. M. Stevenson*; *E. V. Falk*.

SOLICITORS: *J. N. Mason & Co.*; *Corbin, Greener & Cook*; *Gery & Brooks*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Queen Anne's Bounty (Governors) *v.* Tithe Redemption Commission.

Greene, M.R., Scott and Clauson, L.JJ.
11th November, 1938.

ECCLESIASTICAL LAW—TITHE RENT-CHARGE—RECOVERY OF ARREARS—NOTICE BY TITHE-OWNER—TIME—TITHE ACT, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), s. 20 (3), (10) (*a*).

Appeal from Morton, J. (82 SOL. J. 645).

By the Tithe Act, 1936, the power to recover and give a discharge for arrears of tithe rent-charge was, from the 1st April, 1937, vested exclusively in the Tithe Redemption Commission. By s. 20 (3) the Commission was not thereafter to commence legal proceedings for the recovery of arrears till one month after the tithe-owner had by notice in writing, served after that date, given the tithe-payer and the Commission particulars of the arrears he claimed to be recoverable. Under the Tithe Act, 1891, s. 10 (2), no sum in respect of tithe rent-charge was recoverable unless proceedings were begun before the expiration of two years from the date when it became payable. By s. 20 (10) (*a*) of the 1936 Act it was provided that this sub-section should have effect in relation to recovery of arrears by the Commission, "so, however, that in reckoning the said period of two years, time after the tithe-owner has served a notice for the purposes of sub-section (3) of this section on the tithe-payer, during which legal proceedings may not, by virtue of this section, be commenced or continued, shall be excluded." Certain tithe rent-charge having fallen due on the 1st October, 1935, notice for the purposes of s. 20 (3) had been served by being sent by registered post on the 30th September, 1937, to arrive in due course of post at 10 a.m. on the 1st October, 1937. After the expiry of one month, the Commission began proceedings on the 2nd November to recover the arrears. Doubts having arisen, however, they intimated to the Governors of Queen Anne's Bounty that they did not propose to continue the proceedings. On this summons the question was raised whether the time after the service of the notice excluded from the two-year period by s. 2 (10) (*a*) comprehended the day on which the notice was given. Morton, J., held that it did not, and accordingly refused to direct the Commission to refrain from discontinuing the proceedings.

GREENE, M.R., dismissing the plaintiffs' appeal, said that they had argued that in computing the two-year period under s. 10 (2) of the 1891 Act there had to be excluded a period beginning with the actual moment when the notice was served (i.e., 10 a.m. on the 1st October, 1937), and that if the period beginning with that moment and ending at midnight on the 1st–2nd October were excluded, what was left of the two-year period (from the 1st October, 1935) was fourteen hours (i.e., from 10 a.m. to midnight). This, they said, being added at the other end, would give the Commission fourteen hours from midnight on the 1st–2nd November to serve their writ so that any writ served within those hours would be in time. But on the true construction of s. 20 (3) the month after the service of the notice was to be calculated as from the midnight following the actual time of service (i.e., in this case, midnight of the 1st–2nd October).

COUNSEL: *Vaisey*, K.C., *Eversheds*, K.C., and *A. Armstrong*; *The Attorney-General* (Sir Donald Somervell, K.C.) and *Hubert Hull*.

SOLICITORS: *Solicitor to Queen Anne's Bounty*; *Official Solicitor to Ministry of Agriculture and Fisheries*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Lewis; Jennings *v.* Henley.

Simonds, J. 1st November, 1938.

ADMINISTRATION—ESTATE INCLUDING LEASEHOLDS—EXECUTOR INDEMNIFIED AGAINST LIABILITY—INDEMNITY FUND PAID INTO COURT—STATUTE OF LIMITATIONS—CLAIM BY BENEFICIARIES FOR PAYMENT OUT.

A testatrix, who died in 1890, bequeathed certain leasehold property to W and the residue of her estate equally between W and B. The estate included property at Stratford and at West Ham, held on two long leases containing the customary repairing covenants. In an administration action in 1891, it was ordered that £5,000 be paid into court as a fund to indemnify H., the executor, against liability to which he might be subject under these repairing covenants. In the order there was an admission that all debts and legacies had been paid in full. H. died in 1906. In 1937, the leases having still some years to run, a petition was presented for payment of the sum into court or so much of it as was not required for the indemnity to the beneficiaries.

SIMONDS, J., said that the present representatives of the estate of the testatrix no longer needed any indemnity. A fund so paid into court was not for the benefit of the lessors, but solely for the protection of the executors (*In re Nixon* [1904] 1 Ch. 638; *In re King* [1907] 1 Ch. 72). A lessor as a possible future creditor could not require the provision of such a fund. Any claim against the executors was now barred by the Statute of Limitations (*In re Blow* [1914] 1 Ch. 233). In some cases a distinction had been drawn between cases where there was, and cases where there was not, privity of estate between the executors and the lessor, but if there was such a distinction it only affected the period of limitation. Here the fund was no longer necessary for the protection of the executors and could be paid to the beneficiaries.

COUNSEL: *J. L. Stone*; *A. Coulson*; *J. Nesbitt*.

SOLICITORS: *Walter O. Freeman*; *Samuel Price & Sons*; *Halsey, Lightly & Hemsley*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Edgington and Others *v.* Swindon Corporation.

Finlay, L.J. (sitting as an additional judge of the King's Bench Division).
20th October, 1938.

HIGHWAY—OMNIBUS SHELTER—ERECTION BY LOCAL AUTHORITY ON PAVEMENT OF PUBLIC STREET—INTERFERENCE WITH RIGHTS OF FRONTAGERS—HOW FAR PERMISSIBLE—DUTY OF AUTHORITY TO ACT REASONABLY—SWINDON CORPORATION ACT, 1926 (16 and 17 Geo. 5, c. xciii), s. 21.

Action claiming an injunction against a local authority for the removal of a shelter for omnibus passengers which they had erected on the pavement of a street.

The plaintiffs were freeholders and leaseholders of two houses adjoining a highway at Regent Circus, Swindon. Regent Circus is an important centre for traffic at Swindon, being the terminus for several lines of omnibuses, some operating within the Borough of Swindon and its neighbourhood, and others covering a much wider area. The plaintiffs' houses were now used as offices, and there was an open space between them. The defendant corporation erected a shelter for omnibus passengers on the pavement opposite the space between the two houses. His Lordship found as a fact that, while the erection of the shelter at present caused the plaintiffs practically no injury, it nevertheless constituted to some extent an interference with the private right of access which every frontager has to a public road from any point of his premises.

By s. 21 of the Swindon Corporation Act, 1926: "The corporation may erect and maintain shelters or waiting rooms for the accommodation of passengers on the corporation tramways and on the omnibuses of the corporation and may use for that purpose portions of the public streets or roads." By s. 21 of the Swindon Corporation Act, 1926: "The corporation may erect and maintain shelters or waiting rooms for the accommodation of passengers on the . . . omnibuses of the corporation and may use for that purpose portions of the public streets or roads . . ."

FINLAY, J., said that he was satisfied that the erection of the shelter did constitute some degree of interference with the private right of access. It was clearly laid down in the speech of Lord Atkin, in *Marshall* v. *Blackpool Corporation* [1935] A.C. 16, at p. 22; 79 SOL. J. 251, that "the owner of land adjoining a highway has a right of access to the highway from any part of his premises. A survey of the authorities, which were not altogether easy to reconcile—*Vernon* v. *St. James, Westminster Vestry* (1880), 16 Ch. D. 449; *Metropolitan Asylum District Managers* v. *Hill* (1881), 6 App. Cas. 193; *London, Brighton & South Coast Rly. Co.* v. *Truman* (1885), 11 App. Cas. 45; *Goldberg & Son Ltd.* v. *Liverpool Corporation* (1900), 82 L.T. 362; and *East Fremantle Corporation* v. *Annois* [1902] A.C. 213, showed that the question of the legality of the corporation's action depended on whether s. 21 by express terms or necessary implication authorised interference with a private right. The fact that the section made no provision for payment of compensation did not raise a presumption that no authorisation of interference with private rights was intended. The provisions in s. 25 of the Act of 1931, preventing the corporation from erecting any shelter, waiting room, cloakroom or shed, or appointing any starting or stopping station or place so as to cause interference with or render less convenient the access to or exit from any station, depot or property belonging to the Great Western Railway Company without the latter's written consent, was an indication that the possibility was considered by the legislature that s. 21 might authorise the interference with private rights. Where the legislature contemplated the erection of a number of shelters it must be taken to have contemplated also the possibility that the erection of the shelters would interfere with the rights of frontagers. The interference involved might be great or slight, but the corporation's discretion with regard to the matter was subject to intervention by the court in the event of the corporation's acting unreasonably, for example, by electing as a site for a shelter a site which would cause serious injury to property when there was available an alternative site which would cause no such injury. The corporation were authorised by s. 21 to do something which it must have been contemplated would involve an interference with private rights, and they were so authorised, notwithstanding that the section did not compel the corporation to do a specific thing in a specific place. There must be judgment in their favour.

COUNSEL: *Edward Terrell*, for the plaintiffs; *R. M. Montgomery*, K.C., and *W. E. P. Done*, for the defendants.

SOLICITORS: *Church, Adams, Tatham & Co.*, for *Withy & Pooley*, Swindon; *Sharpe, Pritchard & Co.* for *W. H. Bentley*, Town Clerk, Swindon.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Gillmore *v.* London County Council.

du Parcq, L.J. (sitting as an additional judge). 7th November, 1938.

NEGLIGENCE—WARRANTY—PHYSICAL TRAINING CLASSES ORGANISED BY LOCAL AUTHORITY—PARTICIPATION BY PLAINTIFF ON PAYMENT OF FEE—FALL ON SLIPPERY FLOOR—LIABILITY OF LOCAL AUTHORITY.

Action for damages for breach of warranty or negligence.

In January, 1937, the plaintiff, having seen an advertisement of physical training classes organised by the defendant council, paid them a fee of 5s. and attended the classes from January until June, 1937. The classes were being held in a hall with a polished floor suitable for dancing. The exercises performed by the class were Swedish, some of them being of a rather formal character and some less so. The particular exercise in question in the case was one performed by the men in pairs, each one hopping on his right leg with his hands behind his back and endeavouring by lunging to compel his partner or opponent to put his left foot to the ground. On the day in question Gillmore was engaged in that exercise when, according to his account, as he went to put his left leg to the ground, he slipped and fell, breaking his leg. He had never slipped on that floor before, and it had never occurred to him that it was dangerous. He was wearing rubber-soled shoes. He accordingly brought this action, contending that the defendants had been guilty of a breach of warranty in that the floor of the hall was so highly polished as to be unsafe for instruction in physical exercises. The defendants denied negligence or breach of warranty, and pleaded *volenti non fit injuria*, contending that, if the condition of the floor was dangerous, that fact was obvious to the plaintiff, and that he voluntarily undertook any risk which there was in doing the exercises on it.

DU PARCQ, L.J., said that the plaintiff contended that the floor surface of the hall was really not suitable for exercises of the kind done at those classes. The question was whether the floor was a reasonably safe one for the defendants to use when inviting persons to a hall for physical exercises of that kind. The rule in *Maclenan* v. *Segar* [1917] 2 K.B. 325, was not applicable to a case like this. If any person invited another for reward to take part in physical training, inviting him for that purpose to premises which he had hired, the person inviting impliedly warranted that he had taken reasonable care to see that the premises were safe for the purpose. He (his lordship) found as a fact that the plaintiff did slip, that the floor was highly polished and that other persons had slipped on it before. The floor was dangerous, as that accident had proved. It was not negligent to have a hard wood floor, but to have a highly polished hard wood floor was not reasonably safe and was a breach of warranty. He regretted having to give a decision which might make things difficult for the London County Council, but there must be judgment for the plaintiff for £220, and costs.

COUNSEL: *John Bassett*, for the plaintiff: *R. T. Monier-Williams*, for the defendants.

SOLICITORS: *W. B. Blackwell & Co.*; *J. Howard Roberts.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Racecourse Betting Control Board *v.* Wild.

Macnaghten, J. 9th November, 1938.

REVENUE—INCOME TAX—BUILDINGS ERECTED BY COMPANY ON ITS OWN PREMISES TO APPROVAL OF ASSOCIATION—ASSOCIATION GIVEN RIGHTS IN BUILDINGS—ANNUAL PAYMENTS BY ASSOCIATION TO COMPANY OF PERCENTAGE OF COST OF BUILDINGS—WHETHER REVENUE OR CAPITAL PAYMENTS—WHETHER DEDUCTIBLE IN COMPUTING ASSOCIATION'S TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D., Case I.

Appeal by case stated from a decision of the Special Commissioners of Income Tax.

The Racecourse Betting Control Board appealed to the Special Commissioners against assessments raised on it under Case I, Sched. D, of the Income Tax Act for the years 1935–36 and 1936–37. The Control Board was created in 1928, *inter alia*, to operate totalisators under the Racecourse Betting Act, 1928. Under an agreement dated 14th June, 1934, between the Manchester Racecourse Company, Limited,

and the Control Board, the company was to erect buildings on plans approved by the Control Board to house totalisators and to licence those buildings to the board. The company granted to the board for a term of twenty-one years from 7th September, 1934, an exclusive right to operate totalisators in the buildings on all days on which racing took place at Manchester—normally on seventeen days in each year. The company undertook to maintain the buildings in good repair, to heat and light them, and to pay all rates and taxes, provided that they did not exceed £800 in any year, and also to insure the buildings against fire and other risks. It was provided that the deed of agreement should not operate as a demise of any part of the company's premises or create the relation of landlord and tenant between the company and the board. For the right to use the premises the board was to pay the company annually 12½ per cent. of the cost of the construction of the buildings, which had been agreed at £27,500. That sum was expressed to be not only a yearly consideration in respect of the rights granted by the deed, but also in repayment by yearly instalments of the capital value of the cost to the company of constructing the buildings. For the board, it was contended that, the whole of the annual sum mentioned being paid to obtain access to the buildings to operate totalisators, it was wholly and exclusively laid out or expended for the purposes of the trade of the board; that no part of that sum was an expenditure of capital by the board; and that the whole of the sum was deductible in computing the profits of the board for assessment to income-tax under Case I of Sched. D. For the Crown, it was contended that part of the annual sum payable to the company was in respect of the capital cost incurred by the company in erecting premises to house the totalisators, and that that part, being capital expenditure, fell to be disallowed as a deduction in the computation of the profits of the board under Case I of Sched. D. The Commissioners held that part of the payment made to the company was in the nature of capital and that the appeal accordingly failed. The Control Board appealed.

MACNAGHTEN, J., said that the deed contained a declaration (which conferred no rights and imposed no liabilities on either party, but seemed to be addressed to all whom it might concern—including the revenue and the rating authorities—) that the annual sums were to be, not only a yearly consideration in respect of the rights granted by the deed, but also in repayment by yearly instalments of the capital value of the cost to the company of constructing the buildings. Of the cases cited the one which most impressed him was *Commissioners of Inland Revenue* v. *Adam* (14 T.C. 34). The half-yearly payments there were held to be capital payments, and the question of "form and substance" was discussed. So, in the case before him, that question had emerged from time to time. The case fell to be decided in accordance with *Commissioners of Inland Revenue* v. *Duke of Westminster* [1936] A.C. 1. The question of revenue or capital payment might depend on the angle from which it was viewed. A payment might be revenue from the point of view of the payor and capital from the point of view of the payee, or *vice versa*. The fact that the annual sum here was one which over twenty-one years would recoup the company the whole of their expenditure and give a reasonable return for their investment was immaterial. In his view, the payments must be regarded as revenue payments, and the appeal must be allowed.

COUNSEL: *A. M. Latter*, K.C., and *J. S. Scrimgeour*, for the appellants; *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*, for the Crown.

SOLICITORS: *Simmons & Simmons; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Simons *v.* Simons.

Goddard, L.J., sitting as an Additional Judge.
9th November, 1938.

HUSBAND AND WIFE—DIVORCE GRANTED IN AMERICA—HUSBAND NOT DOMICILED THERE—MAINTENANCE ORDER BY AMERICAN COURT—ARREARS—CLAIM FOR AGAINST HUSBAND IN ENGLAND—WHETHER MAINTAINABLE.

Action to recover arrears under a maintenance order of the Probate Court of the Commonwealth of Massachusetts, U.S.A.

The defendant, James Simons, a Cornishman by birth, had a small business in Penzance. He went to Boston, Mass., in 1912, and there worked for an employer, leaving his wife and four young children in England. In 1914 he returned and worked for two years in England, but in 1916 returned to Boston and worked again for the same employer. In about 1923 he sent money over to his wife for the purpose of bringing her and the children to Boston, and they duly joined him there. In 1924 Mrs. Simons petitioned for divorce in Massachusetts alleging cruelty and neglect to provide suitable maintenance, while the husband cross-petitioned for divorce. The court in Massachusetts granted the wife a decree, and ordered the husband to pay her maintenance at the rate of $14 a week. The husband made payments under that order for two years, and then returned to England. For twelve years the wife never approached the husband or applied to him for maintenance, although she must have known his address. She now claimed the equivalent of six years' arrears of weekly amounts of $14 due under the order.

GODDARD, L.J., said that the wife had to prove that the divorce was valid. For that purpose she had to show that her husband was domiciled in the State of Massachusetts. To prove that a person had abandoned his domicile of origin and acquired a new domicile of choice involved a considerable burden. The plaintiff might have given evidence of the reason why she went out to Boston, of what her husband told her to induce her to go out, of declarations which he made when they were there, and of the state of affairs which she found when she got there, but she had not done so. It would be quite wrong to hold that, a husband's merely sending for his wife and children to go to a country where he was living conclusively established the husband's domicile in that country, and he (the Lord Justice) was of opinion that the plaintiff had entirely failed to prove that her husband was domiciled in Massachusetts at the time of the divorce. It had been proved that, according to the law of Massachusetts, as under the law of England, a court assumed to divorce only those persons who had a domicile within the State. Therefore, according to the law both of Massachusetts and England, the court of Massachusetts had no jurisdiction to pronounce a decree of divorce in favour of the plaintiff, and, according to the law of England, she was still married to the defendant, and that divorce was a nullity in England. It was contended for the plaintiff that the order for maintenance remained as a good order *in personam* made by a court to the jurisdiction of which both parties had submitted; and in support of that counsel had relied on *Beatty* v. *Beatty* [1924] 1 K.B. 807 and *In re Macartney; Macfarlane* v. *Macartney* [1921] 1 Ch. 522. He (his lordship) was of opinion that, wherever a court had assumed a jurisdiction which it had not, either according to its own law or the law of England, to pronounce a decree of divorce, any order which the court had made consequent on that assumption of jurisdiction, even if it were an order *in personam*, must suffer the same fate as the rest of the decree. That opinion was not only supported but covered by *Papadopoulos* v. *Papadopoulos* [1930] P. 55, which was a decision of a Divisional Court and binding on him. Counsel for the plaintiff had contended that that case differed from the present because there the lack of jurisdiction depended on the constitution of the court; but it appeared to him (his lordship) that, if a court had no jurisdiction, it

mattered not whether the lack of jurisdiction arose from the constitution of the court or from any other ground. Moreover, that case was concerned with nullity. Where the question was the celebration of a marriage and the solemnisation of such marriage in proper form, the court of the country where the marriage purported to have been celebrated might declare the marriage null for want of proper solemnisation, although the parties were not domiciled in that country. That principle had no application to the present case. Where the question was one of dissolution of marriage, the parties must be domiciled within the jurisdiction of the court which purported to grant the decree of dissolution. The action failed.

COUNSEL: *H. M. Pratt*, for the plaintiff; *J. Lhind Pratt*, for the defendant.

SOLICITORS: *Torr & Co.*, for *Borlase & Venning*, Penzance; *Attenboroughs*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Tate *v.* Tate.

Bucknill, J. 18th June, 4th November, 1938.

DIVORCE—WIFE'S PETITION ON GROUND OF DESERTION—RESPONDENT'S BRUTALITY INCEPTION OF DESERTION—SEPARATION AGREEMENT—RESPONDENT'S REPUDIATION OF TERMS—DECREE—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 2 (*b*).

This was a wife's undefended petition for dissolution on the ground of desertion within the Matrimonial Causes Act, 1937, s. 2 (*b*).

BUCKNILL, J., in giving judgment, said that the petitioner had proved to his satisfaction that the respondent had behaved to her in such a way as to constitute desertion on his part in April, 1931. He had terrified her and she had had to go back to her mother. Then she went back to the house to see him, when he practically told her to clear out. In June of that year a separation agreement was signed by both parties. That contained an agreement to live separate and apart, and the respondent was to pay to the wife the sum of £1 per week for the maintenance of herself during joint lives and 10s. per week for the maintenance of the child of the marriage. It was difficult to say that a wife was forsaken or abandoned by her husband if she had in fact agreed with him to live separate and apart from him. The respondent paid only about £6 altogether during the first month or so after the agreement, and had never paid a penny since October 1931, in which month he disappeared. That was nearly seven years ago. The wife was left practically destitute. She had worked for her living and maintained herself and the child. Several cases had been cited, but apart from *Ratcliffe* v. *Ratcliffe*, 82 SOL. J. 455, which Langton, J., decided in the present year, they were all cases where the wife, under the old law, had been claiming a decree on the grounds of her husband's adultery and desertion for two years. It seemed to him, his lordship, quite clear that the wife could not succeed in her petition unless she was able to dispose of the deed, and to satisfy the court that it was no longer binding upon her, and had not been binding upon her for three years preceding the date of the petition. If, in fact, however, she had been living under an agreement to live separate and apart from the respondent during any part of those three years, it could not be said that the respondent at that time had deserted her. However, he, his lordship, thought that he was entitled to look at all the facts of the case, and he started with the very important facts that the initial break-up of the home was due to a clear act of desertion by the respondent, and that those wrongful acts of the respondent, constituting desertion, continued in their consequence until they were removed, or unless they were removed by the deed. The respondent could not rely upon the deed as protecting him from his original wrongful acts of desertion if it was clear on the evidence that he had treated the deed as not binding upon him in any way. He had repudiated the deed by completely failing to make the all-important payments to his wife for herself and her child, and by disappearing and failing to keep in touch with his wife, and failing in any way to give her the help and support to which one spouse was entitled from the other. The respondent could not set up the deed which he had treated in that way as a defence to the present proceedings. Further, it would not be fair or just to the wife if the court were to take that point, which was not open to the husband, and thereby defeat her petition. He, his lordship, was not saying for a moment that the court was unable to take the point if it wished to take it. In the divorce jurisdiction an estoppel binding on the husband did not estop the court from reviewing all the facts, and seeing where the essential truth lay. However in the present case he was satisfied that the facts were such as to prove that the husband had deserted his wife for three years immediately preceding the petition, and she was therefore entitled to her decree.

COUNSEL: *Theodore Turner*, for the petitioner.

SOLICITORS: *Kenneth B own, Baker, Baker.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

University of London Law Society.

The University of London Law Society held a joint debate on Tuesday, 15th November, at Gower Street, with the Hardwicke Society, on the motion: "The evil that men do lives after them; the good is oft interrèd with their bones." The proposer was Mr. B. Simmons (Hardwicke Society); the seconder was Mr. D. Sacker (University of London Law Society). The opposer was Mr. F. E. C. Wood (University of London Law Society); the seconder was Mr. J. A. Petrie (Hardwicke Society). There also spoke: Messrs. Hunt and Sturge (Hardwicke Society) and Messrs. Geffen, Flood, Greenberg, Leffman, Goldman, Miss Powell and Miss Reta (University of London Law Society). Mr. F. E. C. Wood and Mr. B. Simmons summed up. The motion was lost by nine votes to twenty-one.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 14th November, Mr. J. H. Vine Hall in the chair. Mr. A. J. Pratt proposed: "That this House deplores the lack of support of the Chinese Government by Great Britain." Mr. J. L. P. Harris opposed. Messrs. A. Davies, M. Solomon, C. H. Pritchard, F. H. Butcher, R. J. Kent, F. R. Wood-Smith, G. Gladston, A. E. Hunter, E. D. Smith and F. R. McQuown also spoke. Mr. Pratt replied, and on a division the motion was carried by one vote.

The Hardwicke Society.

A meeting of the Society was held on Friday, 11th November in the Middle Temple Common Room, the President, Mr. Lewis Sturge, in the chair. Miss M. Morgan Gibbon moved "That this House would welcome ladies on the Judicial Bench." Mr. G. E. Crawford (ex-President) opposed. There also spoke Mr. G. Krikorian, Mr. A. C. Douglas, Mr. Richard H. Hunt (Hon. Secretary), Mr. C. O. Cummins, Miss D. Knight Dix, Major R. N. Hales, Mr. O. H. Cook, Mr. Green, the President (having vacated the chair), Mr. K. Krikorian, Mrs. Hales, Mr. Buller, Mr. L. S. Weinstock, Mr. Norman Edwards (Hon. Treasurer), Mr. H. K. Sadler, Mr. J. Reginald Jones. The hon. Mover having replied, the House divided, and the motion was carried by twelve votes.

Parliamentary News.

Progress of Bills.

House of Lords.

Marriage (Scotland) Bill.
Read First Time. [10th November.

House of Commons.

Access to Mountains Bill.
Read First Time. [11th November.
Adoption of Children (Regulation) Bill.
Read First Time. [11th November.
Charitable Collections (Regulation) Bill.
Read First Time. [11th November.
Charities (Fuel Allotments) Bill.
Read First Time. [11th November.
Clubs Registration Bill.
Read First Time. [11th November.
Coal Mines Bill.
Read First Time. [11th November.
Coast Protection Bill.
Read First Time. [11th November.
Consumers' Council Bill.
Read First Time. [11th November.
Contraceptives (Regulation) Bill.
Read First Time. [11th November.
Criminal Justice Bill.
Read First Time. [10th November.
Custody of Children (Scotland) Bill.
Read First Time. [11th November.
Expiring Laws Continuance Bill.
Read First Time. [16th November.
Highways Protection Bill.
Read First Time. [11th November.
Law of Libel (Amendment) Bill.
Read First Time. [11th November.
Local Authorities (Enabling) Bill.
Read First Time. [11th November.
Local Elections (Proportional Representation) Bill.
Read First Time. [11th November.
Marriage Bill.
Read First Time. [11th November.
Milk Industry Bill.
Read First Time. [16th November.
Mining Subsidence Bill.
Read First Time. [11th November.
Ministry of Health Provisional Order (Mid-Staffordshire Joint Hospital District) Bill.
Read Third Time. [15th November.
Official Secrets Bill.
Read First Time. [11th November.
Public Health (Coal Mine Refuse) Bill.
Read First Time. [11th November.
Public Places (Order and Decency) Bill.
Read First Time. [15th November.
Reorganisation of Offices (Scotland) Bill.
Read First Time. [10th November.
Representation of the People Acts (Amendment) Bill.
Read First Time. [11th November.
Riding Establishments (Registration and Inspection) Bill.
Read First Time. [11th November.
Shops Bill.
Read First Time. [11th November.
Voluntary Hospitals (Relief from Rating) Bill.
Read First Time. [11th November.
Water Supply Bill.
Read First Time. [11th November.
Workmen's Compensation Acts (1925 to 1934) Amendment Bill.
Read First Time. [11th November.
Workmen's Compensation Bill.
Read First Time. [11th November.

Questions to Ministers.

CORONERS (DEPARTMENTAL COMMITTEE).

Sir A. WILSON asked the Home Secretary what action he proposes to take to give effect to some or all of the recommendations of the Departmental Committee on Coroners?

Sir S. HOARE: I do not think that it will be possible to undertake legislation on this subject this Session. [14th November.

WORKMEN'S COMPENSATION (ROYAL COMMISSION).

Mr. DAVID ADAMS asked the Prime Minister whether he can state the terms of reference of the Royal Commission upon workmen's compensation, with names of the persons to serve upon the same?

THE PRIME MINISTER: I am glad to be able to announce that Sir Hector Netherington, Principal and Vice-Chancellor of the University of Glasgow, has agreed to act as Chairman of the Royal Commission, and I hope it will not be long before I am in a position to announce the complete composition of the Commission.

Following are the terms of reference:—

"To inquire into and report on the operation and effects of the system of workmen's compensation for injuries due to employment and the working and scope of the law relating thereto, and the relation of this system to other statutory systems for providing benefits or assistance to incapacitated or unemployed workmen and to arrangements for the treatment of injured workmen and the restoration of their working capacity, and to make such recommendations, whether by way of amendment of the Workmen's Compensation Acts or otherwise, as may appear desirable;

"And, further, to consider in relation to workmen's compensation and advise whether any alteration is desirable in the present position in regard to the civil liability of the employer to pay compensation or damages in respect of such injuries independently of those Acts." [14th November.

Legal Notes and News.

Honours and Appointments.

Mr. ARTHUR MORLEY, K.C., has been elected a Master of the Bench of the Middle Temple.

Mr. R. GRANT-FERRIS, M.P. for St. Pancras N., and Mr. CHARLES L. DES FORGES, Town Clerk of Rotherham, have been appointed members of the Committee on Highway Law Consolidation to fill the vacancies occasioned by the death of Mr. Frank Clarke, M.P., and the resignation of Mr. F. Warbreck Howell. Mr. Grant-Ferris was called to the Bar by the Inner Temple in 1937, and Mr. des Forges was admitted a solicitor in 1902.

Westminster City Council have appointed Mr. JOHN WARING SAINSBURY, Deputy Town Clerk of Bromley, as Deputy Town Clerk of Westminster. Mr. Sainsbury was admitted a solicitor in 1933.

Notes.

The forty-seventh annual dinner of the Chartered Institute of Secretaries will be held in Guildhall on Thursday, 24th November.

The directors of the Alliance Assurance Company Limited, at their meeting last Wednesday, declared an interim dividend, payable on the 5th January, 1939, of eight shillings per share, less income tax.

President Roosevelt announced on Tuesday that Mr. Homer S. Cummings, the Attorney-General of the United States, is to resign from the Administration in January to resume his private practice.

Middlesbrough Borough Council has petitioned the Home Secretary to appoint a stipendiary magistrate in succession to the late Mr. H. S. Mundahl. It is expected that the Home Secretary will take the necessary steps to secure an early appointment.

The University of London Law Society announces that a "Professors' Evening" will be held on Tuesday, 22nd November, at University College. The motion will be "That it is better to have loved and lost than never to have loved at all."

Mr. F. W. Raffety, former M.P. and member of London County Council, is shortly to resign his position as honorary Recorder of High Wycombe, a position he has held for thirty-three years. Mr. Raffety was called to the Bar by the Middle Temple in 1898.

The Institute of Arbitrators (Incorporated) will hold a practice arbitration on Wednesday, 23rd November, at 6 p.m., in the Hall of the Society of Incorporated Accountants and Auditors, Embankment, W.C.2 (near Temple Station). The subject matter is "Salvage arising out of the drifting of a Steamship." The award will be made immediately after the hearing, and it is hoped there will be time for a discussion.

The directors of the Legal & General Assurance Society Limited have the pleasure to announce that the Right Honourable Viscount Hailsham, P.C., LL.D., D.C.L., D.Litt., has been re-elected a Director of the Society. Viscount Hailsham was first elected to the board in 1919 and except for those periods during which he has held office as a member of H.M. Government he has been associated with the Society as a director.

The following awards are announced at Gray's Inn: Society's Entrance Scholarship of 1938 (£200 a year for three years), Mr. Henry Graham Head, of Balliol College, Oxford. Lord Justice Holker Junior Scholarship of 1938 (£200 a year for three years), Mr. Ronald William Brown, of Corpus Christi College, Cambridge. Gerald Moody Entrance Scholarship of 1938 (£100 for one year), Mr. Edward Richard George Heath, of Balliol College, Oxford.

The Master of the Rolls (President) and the Council of the British Records Association held a reception last Monday on the occasion of the sixth conference of the Association at Mercers' Hall, Cheapside (by invitation of the Master and Wardens of the Worshipful Company of Mercers). Sir Wilfrid Greene and the Master of the Mercers' Company received the guests and a large and distinguished company was present, including the Lord Mayor and Lady Mayoress.

A joint meeting of The Medico-Legal Society and the Royal Society of Medicine (Psychiatry Section) will be held at Manson House, 26 Portland Place, W.1, on Thursday, 24th November, at 8.30 p.m., when a discussion will take place on: "The place of the Psychiatrist in relation to the Administration of the Criminal Law." The discussion will be opened by: The Royal Society of Medicine, Dr. R. D. Gillespie, F.R.C.P.; Dr. Denis Carroll: The Medico-Legal Society, Roland Burrows, Esq., K.C., M.A., LL.D., Recorder of Cambridge, Miss Letitia Fairfield, C.B.E., M.D., D.P.H. Members may introduce guests to the meeting on production of the member's private card. Light refreshments are provided at the conclusion of each meeting.

JUBILEE CELEBRATIONS OF THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

To celebrate the Golden Jubilee of The Solicitors' Law Stationery Society, Ltd., which was founded in 1888, a Staff Carnival was held at the Royal Opera House, Covent Garden, last Saturday, the 12th November.

The staff and their wives, numbering over 1,000 people, were received by the Chairman of the Company, Sir Bernard E. H. Bircham, G.C.V.O., and the Directors, Douglas T. Garrett, Esq., W. Alan Gillett, Esq., The Rt. Hon. Sir Dennis H. Herbert, K.B.E., M.P., Harvey F. Plant, Esq., M.C., and G. L. Whately, Esq.

In the course of the evening, the Chairman made presentations to eighty-one members of the staff who had served for twenty-five years or over with the Society. A presentation was also made to Mr. W. E. Taylor, who has served on the staff of this JOURNAL for over fifty years.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 21	Hicks Beach	Ritchie	*More	Andrews
„ 22	Andrews	Blaker	*Hicks Beach	Jones
„ 23	Jones	More	*Andrews	Ritchie
„ 24	Ritchie	Hicks Beach	Jones	Blaker
„ 25	Blaker	Andrews	Ritchie	More
„ 26	More	Jones	Blaker	Hicks Beach
	GROUP II.		GROUP I.	
	MR. JUSTICE MORTON. Witness Part II.	MR. JUSTICE BENNETT. Witness Part I.	MR. JUSTICE CROSSMAN. Witness Part II.	MR. JUSTICE SIMONDS. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 21	*Hicks Beach	*Jones	Ritchie	Blaker
„ 22	*Andrews	*Ritchie	Blaker	More
„ 23	*Jones	*Blaker	More	Hicks Beach
„ 24	*Ritchie	*More	Hicks Beach	Andrews
„ 25	*Blaker	*Hicks Beach	Andrews	Jones
„ 26	More	Andrews	Jones	Ritchie

*The Registrar will be in Chambers on these days, also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th November 1938.

	Div. Months.	Middle Price 16 Nov. 1938.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	108	3 14 1	3 8 0
Consols 2½%	JAJO	72	3 9 5	—
War Loan 3½% 1952 or after ...	JD	99½	3 10 6	—
Funding 4% Loan 1960-90	MN	109¼	3 13 3	3 7 6
Funding 3% Loan 1959-69	AO	95½	3 2 10	3 4 9
Funding 2¾% Loan 1952-57	JD	93½xd	2 18 10	3 4 3
Funding 2½% Loan 1956-61	AO	88¼	2 16 8	3 5 2
Victory 4% Loan Av. life 21 years ...	MS	108¼	3 13 11	3 8 10
Conversion 5% Loan 1944-64 ...	MN	111	4 10 1	2 12 6
Conversion 3½% Loan 1961 or after	AO	99½	3 10 4	—
Conversion 3% Loan 1948-53 ...	MS	100	3 0 0	3 0 0
Conversion 2½% Loan 1944-49 ...	AO	97½	2 11 3	2 15 10
National Defence Loan 3% 1954-58	JJ	98	3 1 3	3 2 8
Local Loans 3% Stock 1912 or after	JAJO	85	3 10 7	—
Bank Stock	AO	330½	3 12 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81½	3 7 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87½	3 8 7	—
India 4½% 1950-55	MN	111½	4 0 9	3 4 10
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105	4 5 9	4 3 8
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	107	3 14 9	3 5 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104½	4 6 1	2 18 4
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90½	2 15 3	3 4 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	101½	3 18 10	3 17 6
Australia (Commonw'th) 3% 1955-58	AO	86½	3 9 4	3 19 10
*Canada 4% 1953-58	MS	108½	3 13 9	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 6
New South Wales 3½% 1930-50 ...	JJ	94½	3 14 1	4 1 8
New Zealand 3% 1945	AO	90½	3 6 4	4 15 0
Nigeria 4% 1963	AO	107½	3 14 5	3 10 10
Queensland 3½% 1950-70	JJ	92⅔	3 15 8	3 18 4
*South Africa 3½% 1953-73	JD	100½	3 9 8	3 9 2
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	84	3 11 5	—
Croydon 3% 1940-60	AO	94	3 3 10	3 8 0
*Essex County 3½% 1952-72 ...	JD	101½	3 9 0	3 7 3
Leeds 3% 1927 or after	JJ	83	3 12 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70½	3 10 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	82½	3 12 9	—
Manchester 3% 1941 or after ...	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	96	2 12 1	2 18 7
Metropolitan Water Board 3% "A" 1963-2003	AO	85½	3 10 2	3 11 7
Do. do. 3% "B" 1934-2003 ...	MS	86½	3 9 4	3 10 7
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	106	3 15 6	3 9 0
* Do. do. 4½% 1950-70	MN	109	4 2 7	3 11 4
Nottingham 3% Irredeemable ...	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	102½	3 18 1	—
Gt. Western Rly. 4½% Debenture ...	JJ	110½	4 1 5	—
Gt. Western Rly. 5% Debenture ...	JJ	122⅝	4 1 8	—
Gt. Western Rly. 5% Rent Charge ...	FA	118½	4 4 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	112½	4 8 11	—
Gt. Western Rly. 5% Preference ...	MA	90½	5 10 6	—
Southern Rly. 4% Debenture ...	JJ	103½	3 17 4	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	105½	3 15 10	3 13 0
Southern Rly. 5% Guaranteed ...	MA	114½	4 7 4	—
Southern Rly. 5% Preference ...	MA	94½	5 5 10	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.